SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, PETITIONER,

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

INDEX

	Original	Print
Proceedings in the United States Court of Appeals for the District of Columbia Circuit		
Joint and supplemental appendices consisting of portions of the proceedings before the Subversive Activities Control Board	1	1
First amended petition	3	2
Answer	11	8
Report and order of the Board	22	15
Preliminary statement	24	16
Findings of fact	28	20
Area or local committees	29	21
Respondent's direction, management and supervision	36	28
Organization and purposes	43	35
Activities	61	53
Communist Party support of respondent	68	60
Concluding findings	72	64
Appendix—List of witnesses	75	67
Order	78	70

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY 27, 1964

	Original	Print
Opinion, Prettyman, J.	93	71
Dissenting opinion, Bazelon, Ch. J.	108	84
Judgment	116	91
Clerk's certificate (omitted in printing)	119	91
Proceedings before the Subversive Activities Control Board	610	92
Transcript of hearings, June 24, 1955–February 10, 1956	610	92
Appearances	610	92
Testimony of James W. Glatis—		
direct	721	93
John Lautner—		
direct	976	95
cross	1076	113
Bernice Baldwin—		
direct	1316	121
Barbara Hartle—		
direct	1561	125
cross	1709	133
Marion Miller—		
direct	2338	134
Clark M. Harper—		
direct	2955	141
cross	2996	149
Louise Pettibone Smith—		
direct	3960	151
cross	4177	155
Dr. Anton Julius Carlson—		
direct	4388	159
cross	4443	160
Abner Green—		
direct	4800	164
cross	6328	176
Petitioner's Exhibit No. 56—Excerpts from front cover and back cover pages of pamphlet entitled, "the deportation drive vs the bill of rights" by Abner Green	6879	179
Order allowing certiorari	6881	181

[fol. 1]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,960

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Review of Order of the Subversive Activities Control Board

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Joint and Supplemental Appendices—Filed August 16, 1962

[File endorsement omitted]

[fol. 3]

BEFORE THE SUBVERSIVE ACTIVITIES CONTROL BOARD

No. 109-53

HERBERT BROWNELL, JR., Attorney General of the United States, Petitioner,

v.

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, Respondent.

On Petition for an Order Requiring the American Committee for Protection of Foreign Born to Register with the Attorney General as Required by Section 7(b), (c) and (d) of the Internal Security Act of 1950.

FIRST AMENDED PETITION—Filed August 28, 1953

The Attorney General respectfully represents to the Subversive Activities Control Board that the American Committee for Protection of Foreign Born was required under Section 7(b), (c) and (d) of the Internal Security Act of 1950 to register and file a registration statement with the Attorney General on or before October 23, 1950, as a Communist-front organization and that it failed to do so and continues to fail to do so.

Pursuant to Section 13(a) of the Act, therefore, the Attorney General petitions this Board for an order, after appropriate proceedings, directing the American Committee for Protection of Foreign Born to register with the Attorney General as a Communist-front organization in the manner required by the Act.

[fol. 4] In support of this petition, the Attorney General alleges the following facts, based on information and belief, relating to the character of the American Committee for the Protection of Foreign Born as measured by the Standards specified in the Act.

I

From its inception in or about 1933 up to and including the date of the filing of this petition there has existed in the United States an organization known as the American Committee for Protection of Foreign Born (hereinafter referred to as the "Committee"). The Committee, which has been and is composed of a large number of members, functions through its national office in New York City and through affiliated branches and chapters throughout the United States. The national office provides leadership, counsel, direction and other assistance to the affiliated branches and chapters which implement on a local level policies, programs, and other objectives formulated and advanced by the national office.

The Committee prepares and distributes the periodical, "The Lamp", and the publication, "Review of the Year".

II

From in or about 1919 up to and including the date of filing this petition, there has existed in the United States an organization known by various names and which is now known as the Communist Party of the United States of America (hereinafter referred to as the Communist Party).

The Communist Party is not now and has not been a diplomatic representative or mission of a foreign government accredited as such by the United States Department of State.

[fol. 5] The Communist Party has been and is substantially directed, dominated and controlled by the government and Communist Party of the Soviet Union, and by the foreign organization controlling the world Communist movement, such foreign organization being known at various times as the Communist International and the Communist Information Bureau. Throughout its existence the Communist Party has operated and continues to operate primarily to advance the objectives of the world Communist movement which was organized by the Soviet Union and which has as its primary objective the establishment of Communist dictatorships of the Proletariat in all countries throughout the world, including the United States, and the

direction, domination and control of this movement is vested in and exercised by the Soviet Union.

The policies of the Communist Party are formulated and carried out, and its activities are performed, pursuant to directives of, and to effectuate the policies of, the Soviet Union, which directs and controls the world Communist movement.

The views and policies of the Communist Party do not deviate from the views and policies of the Soviet Union.

The Communist Party has received financial aid from or at the direction of the Soviet Union.

The Communist Party has sent its members and representatives to the Soviet Union for instruction and training in the principles, policies, strategy and tactics of the world Communist movement.

The Communist Party reports its program, activities and affairs to the Soviet Union.

The principal leaders of the Communist Party and a sub- [fol. 6] stantial number of its members are subject to and recognize the disciplinary power of the Soviet Union.

The Communist Party engages in secret practices for the purpose of promoting its objectives and concealing its direction, domination and control by the Soviet Union.

The principal leaders of the Communist Party and a substantial number of its members consider the allegiance they owe to the United States as subordinate to their loyalty and obligations to the Soviet Union.

The Communist Party has been found by this Board to be a Communist-action organization.

Therefore, the Communist Party has been and is a Communist-action organization as defined by Section 3(3) of the Act.

III

Throughout its existence, the Committee has been and is substantially directed, dominated and controlled by the Communist Party, and has been and is primarily operated for the purpose of giving aid and support to the Communist Party. Pursuant to Section 13(f) of the Act, the following facts are respectfully submitted for the consideration of the Board as illustrative of the above.

(1) From the inception of the Committee up to and including the date of the filing of this petition, a substantial number of the persons who have been active in the management, direction and supervision of the Committee, have been active in the management, direction and supervision of, and as representatives of, the Communist Party. Through these persons the Party has guided and directed the internal affairs of the Committee and has exercised direc- [fol. 7] tion over the formulation of the policies of the Committee. The following facts, among others, are illustrative of the above:

(a) The Committee was organized at the direction and with the assistance of the national officers of the Communist Party.

(b) The Communist Party has placed its members in active control of the Committee.

(c) The governing bodies of the Communist Party exercise the power of approval over the appointments of the officers of the Committee.

(d) The affairs and policies of the Committee have been discussed in meetings of the governing bodies of the Communist Party; decisions governing these matters have been transmitted to the Committee for its compliance.

(2) From its inception up to and including the date of the filing of this petition the Committee has received and continues to receive support, financial and otherwise, from and at the direction of the Communist Party as illustrated by the following facts, among others:

(a) The Communist Party has made contributions of money to the Committee.

(b) The Communist Party, through its members in the Committee and through other Party members, has supervised and advised the Committee in financial matters.

(c) At Communist Party meetings and at other times and places, members of the Party have been urged and instructed to support the activities of the Committee, and Committee publications [fol. 8] and tickets have been distributed.

(d) The Committee has received favorable publicity and support through the Communist Party press.

(e) The Communist Party has assigned its members to aid the Committee and Committee sponsored functions.

(3) From its inception up to and including the date of the filing of this petition the Committee has been and is operated for the purpose of giving aid and support to the Communist Party, and its funds, resources, and personnel have been used to further and promote the objectives of the Party. The following facts, among others, are illustrative of the above:

(a) The Committee was organized at the direction of the Communist Party to undertake as one of its major activities the defense and aid of members and former members of the Party involved in deportation proceedings.

(b) The Committee has conducted campaigns to promote legislation and other action favorable to the Communist Party and to the policies of the Party, and to defeat legislation opposed by the Party.

(c) The Committee has sponsored groups, organizations, meetings and rallies to aid the Communist Party and to promote the aims and objectives of the Party.

(4) From the inception of the Committee up to and including the date of the filing of this petition it never knowingly has deviated from the views and policies

advanced by the Communist Party. The Committee [fol. 9] has advocated and followed the views and policies of the Party in the following instances, among others:

(a) The Committee has supported the views and positions of the Communist Party in opposing the deportation of aliens who were members of the Party.

(b) The Committee actively supported the Communist Party in its efforts on behalf of Gerhardt Eisler, the Communist International Representative who was convicted under Federal criminal law.

(c) The Committee supported the views, policies and objectives of the Communist Party by opposing the enactment of certain legislation regarded by the Party as inimical to its interests such as the Mundt-Nixon Bill, the Hobbs Bill, and the Internal Security Act of 1950.

(d) The Committee has consistently supported the views and policies of the Communist Party toward the Committee on Un-American Activities of the United States House of Representatives.

Respectfully submitted,

Herbert Brownell, Jr., Attorney General; Warren Olney III, Assistant Attorney General; William E. Foley, Harold D. Koffsky, David B. Irons, [fol. 10] John J. Wachter, Attorneys, Department of Justice.

Duly sworn to by Herbert Brownell, Jr., jurat omitted in printing.

[fol. 11]

BEFORE THE SUBVERSIVE ACTIVITIES CONTROL BOARD

ANSWER—Filed October 30, 1953

Answering the amended Petition, the Respondent, by its Co-Chairman, states:

First Defense

The registration provisions of the Internal Security Act of 1950, on their face and as attempted to be applied to Respondent, violate the Constitution of the United States.

Second Defense

Respondent reasserts, and incorporates herein, all the grounds asserted in Respondent's Motion to Dismiss the Petition and Motions to Strike.

Third Defense

A.

1. The allegations of the first (unnumbered) three paragraphs of the Petition are denied, except that Respondent admits that it did not file a registration statement with the Attorney General, for the reason that it is not a Communist-front organization and is not required to file such a statement.

2. Further answering such allegations, Respondent states that it is not a "Communist-front organization"; that it is not directed, controlled, or dominated by, or a "front" for, any other organization; that it sets its own policies and makes its own decisions, and is self-governed.

3. Further answering such allegations, Respondent states that its purpose, work and character are as set forth in Article II of its Constitution, which provides:

[fol. 12] *Purpose*

> The purpose of the American Committee shall be to perpetuate for the foreign born the fundamental American concepts of equality, regardless of race,

color, nationality, creed, or place of birth, and to preserve the fundamental ideals of liberty and hospitality which serve as the guarantees of democracy to all Americans.

The work of the American Committee shall be to promote better relations and understanding between native and foreign-born by means of education; to encourage and facilitate the naturalization of non-citizens; to prevent discrimination against non-citizens or foreign-born citizens because of their nationality, political, economic or religious belief, or lack of citizenship; to prevent the destruction of American families by the threat of deportation; to maintain the traditional right of asylum for political and religious refugees in the United States and to actively work for the solution of the problems confronting the foreign born in the United States.

The American Committee shall be an unaffiliated, non-membership, independent, non-partisan body cooperating with all other organizations interested in any phases of its program.

The aims, purposes, and activities of the Respondent are in the best interests of the United States and in accordance with the finest democratic American traditions.

4. Further answering such allegations, Respondent states that its affairs are governed in accordance with Article III of its Constitution, which provides:

Structure and Officers

The ultimate authority of the American Committee shall be the Annual Conference. The Annual Conference will delegate full responsibility to those individuals and bodies which, in its mature judgment, are best capable of carrying out the program, decisions and authority of the Annual Conference.

The Officers of the American Committee shall be: Honorary Co-Chairmen, Co-Chairmen, and Treasurer, elected annually by the Annual Conference.

The Administrative Officer responsible to the Annual Conference for the work and activities of the American Committee in between the Annual Conference shall be [fol. 13] the Executive Secretary. The Executive Secretary shall be elected annually by the Annual Conference.

B.

The allegations of section I of the Petition are denied, except that Respondent admits the following: (a) Respondent was formed in or about 1933 and has existed in the United States ever since; (b) Respondent has its office in New York City, and it functions therefrom; (c) Respondent prepares and distributes the periodical "The Lamp", and the occasional publication "Review of the Year."

C.

1. Respondent is without knowledge of the matters alleged in section II of the Petition, except that the Respondent is aware of the well-known, public facts that there is in existence an organization known as the Communist Party of the United States of America and that the Board ordered it to register as a Communist-action organization. Such order of the Board, as is also publicly known, is under judicial review and is not final, and for that reason alone, the Board has no authority to entertain the Petition herein.

2. As to all matters as to which Respondent states it is without knowledge, it does so in accordance with section 201.7 of the Board's Rules, which provide that such a statement in the answer "shall operate as a denial."

D.

Answering section III of the Petition:

1. The allegations of the (unnumbered) first two sentences of the section are denied. Further, Respondent refers to and reasserts Paragraphs A.2, 3, and 4 of this Answer.

2. The allegations of the second sentence of the (unlet- [fol. 14] tered) text following (1) of the section are denied.

Respondent is without knowledge of the matters alleged in the first sentence of such text. It further states, in answer to these latter allegations, and other allegations in the Petition as to the political affiliations or beliefs of individuals allegedly active in Respondent, that Respondent does not, and it would be contrary to its principles to, pry into such matters.

3. Respondent is without knnowledge of the matters alleged in (1)(a) of the section, and it further refers to the preceding sentence of this Answer.

4. Respondent is without knowledge of the matters alleged in (1)(b) of the section.

5. The allegations of (1)(c) are denied.

6. Respondent is without knowledge of the allegations of (1)(d) of the section.

7. Further answering the allegations of (1)(a), (b) and (d), Respondent states that it cannot be expected to have knowledge of what other organizations may say about it, and Respondent refers to paragraphs A.2 and A.4 of this answer.

8. Respondent is without knowledge of the matters alleged in the (unlettered) text following (2) of the section down to (a). Respondent further states that it accepts the support of all organizations and persons that choose to support Respondent and its activities, but that Respondent does not in any way thereby surrender its independence or subject itself to the control or direction of those contributing support.

9. Respondent is without knowledge of the matters alleged in (2)(a), (b), (c), (d), and (e) of the section. Respondent further refers to the second sentence of the preceding paragraph of this answer. Respondent also states [fol. 15] that it has received the support of numerous organizations, publications, and individuals, undoubtedly of various political affiliations and views, who are interested in Respondent's contributions to the cause of American democracy.

10. The allegations of the (unlettered) text following (3) down to (a) are denied.

11. The allegations of (3)(a) of the section are denied.

12. Answering (3)(b) of the section, Respondent states that it has conducted campaigns favorable to certain legislation and to defeat other legislation. These campaigns were conducted to promote the policies of the Respondent and not to promote the policies of any other organization. Respondent is without knowledge as to whether the legislation involved in such campaigns was favorable to the Communist Party and its policies. Respondent believes, on the basis of matters which are of public record, that the Communist Party has opposed some legislation opposed by Respondent. So have numerous other organizations and individuals, undoubtedly of various political affiliations, including non-Communist and anti-Communist.

13. The allegations of (3)(c) of the section are denied.

14. Respondent denies the allegations of the (unlettered) text which follows (4) of the section down to (a). Respondent further asserts that its views and policies are and were established by it independently and on their merits, and do not and did not "follow" or "not deviate from" the views and policies of any other organization, although it is undoubtedly true that many other organizations and many individuals have from time to time expressed views and policies on various matters similar to those of Respondent.

15. The allegations of (4)(a) of the section are denied. [fol. 16] Respondent asserts that, in accordance with its own principles and views and in the best interests of the American people, it has opposed the deportation of non-citizens on account of political beliefs or affiliations. Respondent does not defend the political views of particular persons, but it does defend the right of non-citizens to hold dissenting political views. Respondent asserts that many other organizations and individuals, undoubtedly of various political beliefs and affiliations, have likewise opposed political deportations, which are a disgrace to American democracy.

16. The allegations of (4)(b) of the section are denied. Respondent asserts that, in fulfillment of its own policies, it gave assistance to Gerhart Eisler in relation to the deportation proceeding against him and in efforts to secure bail pending such proceeding, because he was a foreign-born individual who was being persecuted.

17. The allegations of (4)(c) of the section are denied. Respondent further asserts that in fulfillment of its own policies it opposed the "anti-alien" provisions of the Mundt-Nixon bill, the Hobbs bill, and the Internal Security Act of 1950.

18. The allegations of (4)(d) of the section are denied.

American Committee for Protection of Foreign Born,
By Louise Pettibone Smith, Co-Chairman.

[fol. 17] *Duly sworn to by Louise Pettibone Smith, jurat omitted in printing.*



(See opposite) ☞

[fol. 22]

[fol. 21] [File endorsement omitted]

BEFORE THE
SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 109-53

WILLIAM P. ROGERS
ATTORNEY GENERAL OF THE UNITED STATES
PETITIONER

v.

AMERICAN COMMITTEE FOR PROTECTION
OF FOREIGN BORN

F. Kirk Maddrix and Malcolm F. Knight for petitioner during the original hearing, and James Lee Weldon, Jr. and Joseph M. Wysolmerski during reopened hearings. Oran H. Waterman and Anthony F. Cafferky also entered appearances for petitioner.

Joseph Forer for respondent

REPORT AND ORDER OF THE BOARD—Decided June 27, 1960

[fol. 24]

PRELIMINARY STATEMENT

This is a proceeding initiated by a petition of the Attorney General of the United States for an order of the Board determining that the American Committee for Protection of Foreign Born, respondent, herein sometimes referred to as the "American Committee" or "American", is a Communist-front organization within the meaning of section 3 of the Subversive Activities Control Act of 1950 and as such must register pursuant to section 7 of that Act.

The Board has earlier determined the Communist Party of the United States [hereinafter sometimes referred to as the "Communist Party" or "Party"] to be a Communist-action organization within section 3 of the Act.[1] The substance of the petition herein is that respondent is a Communist-front organization by reason of its being directed, dominated or controlled by the Communist Party (a Communist-action organization) and primarily operated for the purpose of giving aid and support to such Party.[2] Respondent's answer to the petition denied that it is a Communist-front organization and denied that it is directed, dominated or controlled by any other organization.[3]

Hearings were held before a hearing examiner of the Board during which the Attorney General presented 18 witnesses and 281 exhibits, and respondent 9 witnesses and 237 exhibits. Proposed findings were submitted by both sides and the examiner issued a recommended decision, dated September 10, 1957, that the Board order respondent to register as a Communist-front organization.

Exceptions to the examiner's findings were filed by respondent and a memorandum in reply to the exceptions was filed by petitioner. While the

1 Report and Order of the Board, issued April 20, 1953; Modified Report of the Board, issued December 18, 1956; Modified Report of the Board on Second Remand, issued February 9, 1959. The determination has been affirmed by the United States Court of Appeals for the District of Columbia Circuit. See Communist Party v. Subversive Board, decided July 30, 1959, as yet unreported. The judgment of the Court of Appeals is presently pending review in the Supreme Court.

2 We reject respondent's contention, exception 10, that it cannot be bound by the Board's determination of the status of the Communist Party. If respondent was shown to hold the relationship to the Party alleged in the petition, then the determination of the Party's status is binding and conclusive.

3 No useful purpose would be served by detailing the petition and answer. Where appropriate, specific allegations are set forth in connection with our findings of fact.

[fol. 25]

Board had the case under advisement the United States Court of Appeals for the District of Columbia Circuit remanded to the Board for further proceedings the case in which the Board had determined the Communist Party to be a Communist-action organization. Because of that remand it was necessary to postpone further consideration of the instant proceeding until the completion of the Board's reevaluation of the Communist Party case.[1] On February 9, 1959, the Board issued its decision reaffirming the earlier determination that the Communist Party was a Communist-action organization.

This proceeding was then reactivated by notice of the Board issued on March 2, 1959. On July 16, 1959, the Board ordered petitioner to make available to respondent any prior statements in his possession relating to certain specific matters testified to by the witnesses Hardin, Czarnowski, Harper and Markward, or in the alternative to submit to the Board for its in camera determination any documents containing information relating to the testimony but which petitioner claimed were not producible under the so-called Jencks statute, 18 U.S.C. 3500.[2] The Board's order also required that petitioner afford respondent the opportunity to inspect documents in petitioner's possession which had been acquired by the witness Miller from the Los Angeles Committee but not offered in evidence.[3] Respondent on

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[1]The ultimate issue in this proceeding being respondent's alleged relationship to the Communist Party as a Communist-action organization, final determination by the Board of whether the Party was such an organization was a prerequisite to going forward with this proceeding.

[2]During the hearing before the examiner, respondent had laid a foundation and requested the production of reports made by these witnesses to the Federal Bureau of Investigation on specific subjects of their testimony. The examiner's denial of the requests was assigned as error in respondent's exception 1. The Court of Appeals on January 9, 1958, in CPUSA v. SACB, 254 F. 2d 314, held applicable to this Board's proceedings the principles of the then recent opinion of the Supreme Court in Jencks v. U.S., 353 U.S. 657, concerning the production of F.B.I. reports, and in an unreported memorandum having reference to its January decision, the Court of Appeals on April 11, 1958, recognized the so-called Jencks statute which had been enacted by the Congress following the Supreme Court opinion.

[3]Respondent's exception 4 to the recommended decision assigned as error the examiner's refusal to order these documents made available to respondent and the exception also assigned as error the receipt in evidence of petitioner's exhibits 70 and 71, introduced through the witness Miller. These exhibits have been stricken from the record by the Board's order of July 16, 1959. The documents ordered made available were turned over to respondent at a hearing held on September 21, 1959, and on September 25, 1959, counsel for respondent filed a memorandum stating "The respondent has no further request to make at this time with respect to the so-called Miller documents."

July 24, 1959, filed a motion to modify the reopening order of July 16, 1959, so as to require the production of many other documents. This was denied by the Board for the reasons set forth in a memorandum opinion issued September 14, 1959.

Reports of the witnesses Hardin and Harper were submitted by petitioner to the Board for the excision of irrelevant material and as so excised by the Board were turned over to respondent at a hearing held on September 21, 1959. Upon examination of the reports, respondent requested the recall of the witnesses for further cross-examination in the light thereof and a hearing for such purpose was held on November 12, 1959. We consider infra the various contentions resulting therefrom.

As to the witness Markward, petitioner submitted for the Board's in camera inspection an F. B. I. memorandum relating to information previously furnished by the witness on the particular subject matter of her testimony but petitioner took the position that the document was not producible to respondent. Thereafter petitioner also submitted an affidavit of the F. B. I. agent who had prepared the memorandum. Counsel for respondent was heard on the sufficiency of the affidavit. The Board determined that the document did not qualify for production under 18 U. S. C. 3500. The document and the agent's affidavit have been made a part of the record, sealed, as Board exhibit 1.

Another issue on Markward's credibility was raised by respondent. After the hearing before the examiner had closed, respondent filed on December 26, 1956, a written motion and accompanying affidavit to reopen the proceeding to present evidence and further cross-examine Markward to show that "Markward committed perjury in her testimony in the Blumberg case [United States v. Dr. Alfred Blumberg, D. C. E. D. Pa., Cr. No. 17963] about Dr. Blumberg's alleged remarks at the June 10, 1945, meeting and about what Payne taught in a 1949 class."[1] Respondent contended in exception 3 that the examiner erred in denying the motion.

The motion sought to make a collateral attack upon Markward's general credibility since the subject matters of her testimony in this proceeding did not include and were not related to either Blumberg or any remarks he made at any meeting, or about Payne or anything he taught in any class, and neither of these persons nor the events were issues in this proceeding. The motion thus went far beyond attempting to show prior inconsistent statements of the witness.

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1 Respondent also asserted that in an earlier case of United States v. Frankfeld, D. C. Md., Cr. No. 22322, Markward made no reference to Blumberg's remarks at the 1945 meeting although she testified that two of the defendants in Frankfeld were present at the meeting where Blumberg spoke.

[fol. 27]

Moreover, Markward appeared as a witness in the Board's proceeding involving the Communist Party and, having testified therein on matters touching upon some aspects of her earlier testimony in the Blumberg case, the Board admitted into evidence proffered portions of the Blumberg trial. The Board also considered certain other material going to the credibility of Markward.[1] The examiner took official notice from the record in the Communist Party proceeding of Markward's testimony in the Blumberg case and concluded there was no warrant in recalling her for further cross-examination. Counsel for respondent here was counsel for the Communist Party in that proceeding.

By officially noticing, as we do, all of the credibility items concerning Markward as they appear in the record of the Communist Party proceeding, including her testimony in Blumberg, respondent is given more than would be available for consideration had its motion to produce the Blumberg testimony alone been granted. Markward's testimony in this proceeding was limited and the effect of her entire testimony upon our ultimate conclusion herein is not of major importance. The only findings of fact of any significance based upon her testimony were unrebutted, not denied and not affected by the cross-examination, and the testimony from which the findings are made is credited.

Petitioner elected not to produce the reports ordered by the Board in connection with the testimony of the witness Czarnowski. In view thereof respondent moved that the proceeding be dismissed or in the alternative that all the testimony of the witness be stricken. The alternative motion was granted and the Board's order, issued September 14, 1959, struck from the record all of Czarnowski's testimony. Thereafter both sides were heard on the status of the exhibits introduced through the witness. Pursuant to stipulation and agreement, certain of the exhibits, not depending upon the witness for their authentication, remain in the record. The Board's order issued September 30, 1959, struck from the record petitioner's exhibits 38, 39, 40, 41, 42, 44, 45, 47, and 52, and respondent's exhibits 50, 51, 52, 53, 54, 55, 56, 57, 58, and 59.

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[1] See "Modified Report of the Board on Second Remand," issued February 9, 1959, in Attorney General v. Communist Party, U.S.A., Board Docket No. 51-101, pages 2-9; and "Modified Report of the Board," issued December 18, 1956, in the same proceeding, pages 3 & 4. It will be seen that subsequent to the filing of respondent's exceptions in the instant proceeding the Board has carefully and fully considered not only Markward's testimony in Blumberg but a number of other items going to her credibility, and has considered the cumulative effect of all of the credibility issues.

[fol. 28]

On February 11, 1960, oral argument was heard on the sufficiency of the evidence on the record, including what had transpired since the recommended decision. Counsel for both sides asked that we regard the February 11 argument as supplemental to the oral argument on exceptions that was presented December 7, 1957. We have read and considered the entire record including the earlier arguments. The exceptions and arguments not specifically or by implication dealt with herein have been considered and rejected as not justified or necessary for discussion. A list of the witnesses for each side is attached hereto as an appendix and includes pertinent background information. The factors applicable to the general evaluation of the witnesses, such as possible interest, have been taken into consideration and the testimony weighed and scrutinized as such considerations indicate.

Respondent has contended in substance that the First Amendment and the due process clause are violated by finding "guilt under the Act" from its constitutionally protected activities in defending Communists or persons accused of having been Communists, and by relying upon its views and policies as nondeviation items. See respondent's exceptions 48 and 57. The reasoning of the Court of Appeals in finding no merit to similar assertions in Communist Party, U.S.A. v. Subversive Activities Control Board is applicable here. See 223 F.2d 531, 544-46, 560, 561. Moreover, as we spell out in more detail under the "FINDINGS OF FACT," infra, respondent's policies and activities are examined not for objective validity but rather in the process of determining whether the fact of nondeviation, and the elements of a Communist-front organization are present.

FINDINGS OF FACT

Respondent is an organization which has existed in the United States since in or about 1932 or 1933. Its main office or headquarters is in New York City. The activities of the organization have centered around the foreign born with considerable effort and attention given to the legal and propaganda defense of individuals involved in deportation and denaturalization cases. (Infra.) A substantial number of those defended and in whose behalf respondent has worked have been members of the Communist Party and individuals accused of being Party members. (Infra.)

Anyone charged in deportation or denaturalization proceedings is entitled to be defended, and anyone or any organization may devote efforts to such defense. This is not to say, however, that an organization engaged in these activities, which include as respondents do obtaining contributions of money and other support from the public (see infra), may not be required to register and make the disclosures covered by the Act if the

[fol. 29]

activities have been carried out under circumstances and for purposes which make the organization a "Communist-front organization" as defined in the Act.

In this proceeding, the issues under the Attorney General's petition are, as stated supra, whether respondent's activities have been carried out under circumstances constituting in effect direction and control by the Communist Party of the United States, and whether the purposes for which the activities have been carried out had the primary aims and objectives of aiding and supporting the Communist Party.

Before considering the evidence and making our determinations of these issues, it is pertinent to resolve the subsidiary issue of whether so-called area or local committees for the protection of the foreign born are branches or chapters of respondent so as to constitute one organization within the meaning of the Act.

Area or Local Committees

The petition of the Attorney General alleged that the American Committee for Protection of Foreign Born "functions through its national office in New York City and through affiliated branches and chapters throughout the United States." (Amended Petition, p. 2.) In support of this allegation, petitioner presented evidence on various groups sometimes referred to in the record as "area" or "local committees," more specifically on: the Los Angeles Committee for Protection of Foreign Born, the Michigan Committee for Protection of Foreign Born, the Midwest Committee for Protection of Foreign Born, the New England Committee for Protection of Foreign Born, the Northwest Committee for Protection of Foreign Born (which appears prior to the time of the hearing to have changed its name to Washington State Committee for Protection of Foreign Born), and the Western Pennsylvania Committee for Protection of Foreign Born.[1]

Respondent denied this allegation of the petition and presented evidence from which it was argued that the area or local committees are independent, that the American Committee has no control over them, and that the American Committee cannot be held responsible for the area committees, and vice-versa. Respondent's witnesses, particularly the executive secretary, Abner Green, acknowledged the existence of the above named committees as well as of a Northern California Committee for Protection of Foreign Born, a Minnesota Committee for Protection of Foreign Born, a Philadelphia Committee to Defend Foreign Born, and a Committee to Protect Oregon's Foreign

[1] Petitioner's principal witness on the Midwest Committee was Czarnowski whose testimony has been stricken. (See supra.) There remain in the record as to the Midwest Committee certain exhibits and the testimony of some of respondent's witnesses.

[fol. 30]

Born. There is no evidence, other than incidental reference at the most, to three of these four last named committees.

Documentary evidence in the form of official publications of the American Committee and of various of the so-called area or local committees established a continuous and consistent pattern of authoritative references to the American Committee as the national office or national organization, and the area or local committees as "part of" and "affiliated to" the American Committee. We set forth below some examples, applicable to the American Committee, Northwest, Midwest, and Los Angeles committees.

The Lamp, a periodical admittedly published and distributed by the American Committee and its official organ, reported in the issue for August 1949, that there had been "established a Northwest Committee for Protection of Foreign Born as a part of the ACPFB." (Resp. Ex. 151, p. 4, emphasis added.) An undated brochure or pamphlet issued by the Northwest Committee described itself as "Affiliated to the American Committee for Protection of Foreign Born" and listed names of officers and sponsors of the American Committee preceding a list of the names of officers and sponsors of the Northwest Committee. (A.G. Ex. 34.)

The issue of The Lamp for September-October 1948, under the heading "Work and Activities of American Committee" and the subheading "Organization," related that:

> "The National Office of the American Committee is located in New York City. A Midwestern Office is maintained in Chicago, serving the foreign born in Illinois, Indiana, and Wisconsin." (A.G. Ex. 198.).

A brochure or pamphlet issued by the Midwest Committee announcing its formation in 1947, stated:

> "The Mid-West Committee functions as a part of a national organization, the American Committee for Protection of Foreign Born, which has served the American people for the past 14 years." (A.G. Ex. 256.)

This same pamphlet of the Midwest Committee contained an appeal for contributions of money and stated that annual contributors would receive The Lamp and other material regularly. (As set forth, supra, The Lamp is the official organ published by the American Committee.)

[fol. 31]

The Los Angeles Committee was reorganized as the result of a conference held in Los Angeles in October of 1950, and a report issued by the Committee stated:

> "The Committee shall be affiliated to the national organization known as the American Committee for Protection of Foreign Born, for purposes of mutual support, exchange of information, and co-ordination of activities pertinent to the Committee's aims." (A.G. Ex. 54, p. 2.)

Petitioner's evidence on the policies and activities of the American Committee and of the various area or local committees demonstrated that in actual practice an association existed of the very nature held out to exist in the official publications. This evidence showed that the policies, programs and aims are identical; that the American Committee and the local committees work together and exchange literature and correspondence; that the American Committee and the local committees have a number of dual officers and the persons primarily active in and responsible for the management and direction are members of the Communist Party; and that the American Committee, especially through its executive secretary, Abner Green, had been active in the formation and organization of the local committees. (See infra.)

The identical nature of the policies, programs and aims is revealed from our findings, infra. One aspect not readily apparent therefrom is that the tenor of the official publications of the American Committee has been the nationwide scope of its activities and deportation cases handled by the area committees have been treated as part of its activities by the American Committee.[1] Examples of the latter were: the cases of Joe Weber, Refugio Ramon Martinez, and James MacKay handled by the Midwest Committee; the Mexican deportees and a group referred to as the Terminal Island Four handled by the Los Angeles Committee; and the Giacomo Quattrone-Ponzi case handled by the New England Committee.

The evidence showing that the American Committee and the area committees worked together and exchanged material, and the evidence that American has been active in such things as the formation of the area committees is overlapping. Illustrations of the facts in these respects as they were established by the evidence are set forth in the following paragraphs.

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[1] The American Committee has from time to time listed various organizations which the Committee said aided or supported the American Committee and its campaigns. In no instance of record were the area or local committees so listed, indicating that they were considered more than supporting groups.

[fol. 32]

Abner Green, executive secretary of "American," was the principal speaker at a meeting called to form the New England Committee, and Green stated at the time that the American Committee would work together with the New England Committee and assist it in every manner.

Green visited Los Angeles and discussed with the executive secretary of the Los Angeles Committee the plans for reorganization of that area committee. Petitioner's witness Miller, who had been Secretary of the Executive Board of the Los Angeles Committee, showed that Green acted as coordinator of all area committees; that at Green's request all Los Angeles Committee literature was sent to the American Committee so Green could be kept informed at all times as to what was being done by the Los Angeles Committee; and, that Green kept in close touch with the activities of the Los Angeles Committee.

In 1953, Abner Green met with top officials of the Communist Party in the Northwest United States and stated that he was satisfied with the progress of the Northwest Committee and was pleased with the response at meetings and conferences that were being held around his visit there.

The September-October 1948 issue of The Lamp, supra, announced that the Midwest Committee was moving its office to 431 South Dearborn Street in Chicago, and that that office would also serve as the local headquarters for the American Committee's 15th Anniversary National Conference. (A.G. Ex. 198.) Green served as chairman of one of the sessions of a conference sponsored by the Midwest Committee in Chicago in March 1951.

The remaining consideration in connection with petitioner's evidence on the relationship between the American Committee and the area committees concerns the officers and persons active in the management and direction of the various groups. Our findings, infra, under the heading "Respondent's Management, Direction and Supervision" showing the important roles played by members and functionaries of the Communist Party are relevant to the matter of the relationship between American and the area Committees. In addition, the record shows that a number of individuals who held office in the area committees or were sponsors, were at the same time officers or sponsors of the American Committee.

Illustrative of the latter, and limited to the time of the hearing, the record shows that: Anton Julius Carlson was a sponsor of the American Committee and co-chairman of the Midwest Committee; Pearl M. Hart was a vice-chairman and director of American and Chairman of Midwest; Reverend Charles A. Hill was a sponsor and a director of American and co-chairman of Michigan;

[fol. 33]

Louise Pettibone Smith was former chairman, present honorary chairman of American and honorary chairman of New England; Mildred Treffman was a director of American and executive secretary of the Midwest; and, Lenus Westman was a director of American and executive secretary of the Northwest Committee.

Petitioner put in evidence a Constitution of the American Committee which provided in Article III for the organization of "sub-Committees of the American Committee, both regional and in the different language fields, to function in accordance with the program of the American Committee." (A.G. Ex. 160.) Respondent put in evidence a Constitution reflecting changes made in 1950 or 1951, which did not contain the foregoing, and provided, in part, that:

> "The American Committee shall be an unaffiliated, non-membership, independent, non-partisan body cooperating with all other organizations interested in any phases of its program." (Resp. Ex. 88.)

Respondent relies upon this provision and the testimony of the witnesses, particularly Abner Green, in arguing that the area committees are not associated with or a part of the American Committee. We find the attempted denials of affiliation are not convincing.

When asked on direct examination whether the American Committee had any affiliated branches or chapters, Abner Green qualified his answer by replying "not to my understanding of the term 'affiliated branches or chapters.'" (Tr. 5121.) His explanation of a reference in the American Committee's own publication, The Lamp, to the Midwest Committee as the Mid-West Office of the American Committee, was that the reference was "by inadvertence." (Tr. 5151.) His explanation of the statement in The Lamp that the Northwest Committee was "a part of" the American Committee (Resp. Ex. 151, supra) was "That was simply a formulation and use of language which didn't square with the facts as they were at the time or the organizational setup that existed at the time." (Tr. 5184.) His explanation on cross-examination, of the Northwest Committee's reference to itself as affiliated to the American Committee (supra) was that he wrote to the Committee that they had no right or authorization to indicate that they were affiliated with the American Committee. Green placed this as probably in 1949, said he did not think he had a copy of the letter, and his impression was that he did not consult with the board of directors in connection with it. We note in this connection that a publication of the American Committee called "Review of the Year 1950" (A.G. Ex. 25) contained the following at page 4:

[fol. 34]

"American Committee for Protection of Foreign Born
NATIONAL OFFICE:
23 West 26th Street
New York, 10, N. Y.

MIDWEST:
431 S. Dearborn St., Room 317
Chicago 5, Illinois

NORTHWEST:
300 Mutual Life Building
Seattle, 4, Washington

SOUTHERN CALIFORNIA:
326 West Third St., Room 311
Los Angeles, 13, California"

The addresses given are those which the record shows were also addresses of area committees here involved.[1] This indicates that even after the Northwest Committee had officially proclaimed its affiliation to the American Committee, and after the date when Green said he wrote the letter, the American Committee itself continued to recognize the Northwest Committee as the American Committee's Northwest Office.

Green and Smith, and to an extent the other witnesses for respondent, testified on direct examination that the American Committee does not choose the officers or the governing bodies of the local committees, does not claim or assert any power to direct or control any one of the local committees, does not finance the local committees, and does not tell the local committees what to do with their funds. On direct examination, Green testified that it is true that American and the locals work and consult together and that in "different ways" the American Committee has taken the initiative in getting the local committees established. (Tr. 5138.) Smith testified to a "good deal of cooperation" among the locals and between the locals and the national. (Tr. 4132.

Also on direct examination, Green answered "Yes" to the question whether before Pearl Harbor there were groups considered as branches or chapters or parts of the American Committee but that in 1943 there were "None that I can recall." (Tr. 5127.) On cross-examination he was asked whether in 1949, under the constitution then in effect which was also in effect before Pearl Harbor, it was possible for an organization to affiliate with the

1 The record indicates that at the particular time some or all of the other then existing area committees did not have offices; e.g., Professor Smith's testimony that the New England Committee before 1954, operated out of the home of Ruth Hillsgrove.

[fol. 35]

American Committee. He replied "It was possible under the constitution but not possible in any concrete or real manner." (Tr. 6792.)

Regarding the change in the constitution, Green testified on direct examination that the revision had no effect on the relationship between the American Committee and the local committees existing at the time of the revision.

Respondent's witnesses Carlson, Hill, and McArthur also testified that the locals are independent. We note, however, that this testimony was not unequivocal. Carlson said that basically the problems, plans, and scopes of Midwest and American are identical. Hill said that Michigan and American are "kindred" organizations which cooperate but are autonomous. McArthur referred to the American Committee as the "national organization" and said the locals "parallel the function of the American Committee." (Tr. 5563.)

Respondent's witness Reverend Moulton testified on direct examination that there were a number of "branches" of the American Committee in this country. On cross-examination he said there was one in the Northwest, one in Los Angeles, one in the Midwest, one in New England, and one in the South. On redirect examination, he stated as to the relationship between the American Committee and the local committees: ". . . I think they are children of the parent organization." (Tr. 7067.)

The American Committee and the area committees are not incorporated. The fact that the area committees have their own officers and other indicia of day to day autonomy is not inconsistent with their being associated with the American Committee. Such characteristics are commonplace in organizations consisting of a national body and affiliated branches or chapters. We find on the entire record that the American Committee and the various area or local committees are associated together for joint action on particular subjects. Together they constitute a voluntary association and one organization within the meaning of the term "organization" set forth in section 3(2) of the statute.[1]

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[1] Section 3(2) provides: "The term 'organization' means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects."

Respondent's Direction, Management and Supervision

Considerable evidence was presented by petitioner on the issue of the extent to which persons active in the management, direction, or supervision of respondent, including the local branches, have been active in the management, direction, supervision, or as representatives of, the Communist Party. (Section 13(f)(1) of the Act.)

The record is clear, and we find, that Abner Green, who appeared as a witness for respondent, had been for a number of years, and at the time of the hearing was, the top functionary of the national organization and the most influential official in respondent's management and direction. It is unnecessary to detail here the many facts, established by oral and documentary evidence of both parties, showing Green's importance. He became associated with respondent in 1935, became executive secretary in late 1941, and had held that position continuously up to and including the date of the hearing. Green has been primarily responsible for the work and activities of the organization, he has travelled extensively throughout the country on respondent's business; and, he has compiled respondent's official publication, The Lamp.

Petitioner's witness Lautner, who had been a responsible Communist Party functionary for about twenty years up to early 1950, testified without contradiction or denial by Green, and we find,[1] that Abner Green attended Communist Party meetings; that Green attended the 1948 national convention of the Party; and that, although the 1948 convention was the last meeting at which Lautner recalls seeing Green, Lautner saw him in the Communist Party building on numerous occasions after 1948. A copy of the Communist Party official organ, the Daily Worker, issue for September 7, 1938, named Abner Green as one of four members of the Communist Party participating in a Party sponsored radio broadcast. (A.G. Ex. 168.) An article in the Party's official

[1] There is no basis for finding, as counsel for respondent contends we should, that Lautner's testimony is unreliable. We likewise reject respondent's contention that all of Lautner's testimony should be stricken because on cross-examination when asked where he lived, he replied ". . . Department of Justice Building, Room 3266, Washington, D.C." but declined to state his residence address unless given "guarantees as to my personal safety" because of threats upon his life by "Communist Party underground characters." (Tr. 1083-1084, 1835.) Lautner's direct testimony covered 100 pages of the transcript and he was cross-examined for 283 pages. We see no basis for contending that the absence of Lautner's residence address in any way impaired cross-examination. Respondent developed that at the time of testifying Lautner was a paid employee of petitioner and the cross-examination shows that respondent's counsel was adequately informed as to Lautner's background, environment and activities.

[fol. 37]

organ, Political Affairs, for February 1951, referred to "the Committee for the Protection of the Foreign Born, led by the devoted and indefatigable Abner Green. . . ." (A. G. Ex. 229.)

Green in testifying as a witness for respondent in this proceeding did not deny that he was or had been a member of the Communist Party.[1] On cross-examination he refused to answer, on grounds including the Fifth Amendment privilege against self-incrimination, the question whether during his time with respondent he was ever a member of the Communist Party.

Lautner in addition to the above, also testified that in early 1942, as best as he could recall the date, he and another party functionary, Avro Landy, were designated by the Communist Party governing committee to make a decision involving a dispute in the American Committee for Protection of Foreign Born between Abner Green and one Irving Novick, whom Lautner described as its "leader" at the time; that both Green and Novick were Party members and subject to Party discipline and decisions; that Lautner and Landy had Green and Novick appear before them at the national headquarters of the Communist Party to express their respective sides of the dispute; that the decision was that there was a bad working relationship between the two and Novick should be removed and Green put in as "head" of the American Committee; and, that as a result of the decision, Abner Green, whom Lautner identified at counsel table, was made the head. (Tr. 991-996.)

1 Petitioner's witness Hardin testified that he attended a closed meeting of the Communist Party with Green in Johnstown, Pennsylvania, in 1949, and another party meeting in Pittsburgh, also in 1949, at which Green was present. Green contradicted Hardin as to both meetings. He testified that while he did attend a meeting in Johnstown in 1949, it was a meeting of the American Slav Congress and that he was in New York City at the time fixed by Hardin's testimony as to when the meeting in Pittsburgh took place. At the reopened hearing it developed that Hardin, serving as an informant for the F. B. I. at the time, had not reported on any Communist Party meeting in Pittsburgh in late 1949, at which Green was present. It also developed that meetings Hardin had characterized in his testimony as being the Nationality Committee of the Communist Party were referred to in his F. B. I. reports merely as the "Nationality Picnic" and the "Nationality Group." (Resp. Exs. 277 and 278.) We have fully reviewed all of Hardin's testimony and have ruled that there is no indication he was lying. (Rulings of the Board issued January 14, 1960.) On the other hand, there is sufficient doubt whether the Johnstown and Pittsburgh meetings about which he testified were formal Party meetings and we have not considered them in deciding that Abner Green was shown to be a Party member.

[fol. 38]

In attempted contradiction, Green testified that he succeeded one Curt Swinburne as executive secretary, actually assuming the duties sometime in October or November 1941 and being formally elected to the post by the Board of Directors on December 29, 1941, as reflected in the minutes which were received in evidence; and that Novick, who never had been executive secretary, left respondent regretfully because he had to earn a better living for his family. On cross-examination, Green while denying he met with Lautner and Landy and Novick in 1942, and (on redirect) in 1941, refused to answer on Fifth Amendment grounds a number of questions designed to explore the matter.

The fact that Green succeeded Swinburne as executive secretary is not necessarily inconsistent with Lautner's testimony. There is no basis for assuming that Lautner meant that Novick was the executive secretary at the time. The record shows that Novick had been one of the early functionaries of respondent and no evidence contradicts Lautner's description of him as the "leader." Moreover, the undisputed facts are that Novick left and Green, in becoming executive secretary, developed into the factual head of the organization. Under all of the circumstances, we do not consider Lautner's possible error in the date to be material and we credit the substance of his testimony. To the extent that Green's testimony is contradictory, it is not credited.

Petitioner's witness Hartle, who held high leadership positions in the Communist Party in the Party's Northwest District, testified, without contradiction or denial, and we find, that Henry Huff, chairman of the Party District at the time, reported to a meeting of the District Board in the period between 1948-1950 that he had met with Abner Green and Marion Kinney (see infra) on the occasion of a visit that Green made to the Seattle District as national head of the American Committee. In addition to this reported meeting of Green with a high Communist Party leader, Hartle also established that she met Abner Green in 1953 when Green was present at a luncheon meeting of the defendants in a Smith Act trial in Seattle; that there were present at this meeting Henry Huff, chairman of the Party District Committee and a co-defendant with Hartle in the Smith Act trial, Paul Bowen, a member of the Party District Committee and also a co-defendant, and John Daschbach and Terry Pettus, likewise District Committee members and co-defendants; and, that Green talked at this meeting with Henry Huff about the work of the American Committee and of the progress, with which Green was pleased, of the Northwest Committee for Protection of Foreign Born in the Seattle area.

These facts as established by Hartle are consistent with Green being a member of the Party and tend to corroborate Lautner's testimony that Green became leader of respondent by decision of the Communist Party and served therein as a representative of the Party.

[fol. 39]

We find that Green was a member of the Communist Party and became the leader of respondent by decision of the Communist Party, and we conclude that Green remained and was a member of the Communist Party at the time of the hearing.

The only other person shown, in recent years at least, to have been particularly active in the management of respondent on a national level was Harriet Barron. At the time of the hearing and for a number of years prior Harriet Barron held the title of administrative secretary. Respondent's witness Saltzman testified on direct examination that she had met other people in respondent's office "But Abner Green and Harriet Barron are the main people." (Tr. 4572.) Respondent's witness Professor Louise Pettibone Smith testified that Green and Barron carried on the organization's day-to-day activities.

Lautner testified without contradiction or denial, and we find, that he had Communist Party business with Harriet Barron; that he attended Communist Party meetings at which she was present in the 1930's and the 1940's; and, that in 1949 she visited him at his office at Party headquarters. From this and the entire record, we find that at the time of the hearing and for a number of years prior thereto Harriet Barron was a member of the Communist Party.

From 1948 until the position was abolished in 1952 the title and duties of naturalization aid director were held and carried out by Communist Party member Dorothy Strange. (See infra, page 26.)

We find that on the national level respondent at the time of the hearing was and for a number of years prior had been managed, directed, and supervised by Abner Green and Harriet Barron, both of whom were at the same time members of the Communist Party. From the fact that Green became the top leader of respondent at the direction of the Communist Party, and from other evidence of record, it is concluded that he has served as a representative of the Communist Party in operating respondent.

Respondent presented the testimony of two persons who at the time of the hearing were honorary co-chairmen of the organization, Professor (emeritus) Louise Pettibone Smith was co-chairman in the years 1952 and 1953, and an honorary co-chairman for each year thereafter. She was also honorary chairman of the New England Committee. Bishop Arthur W. Moulton (retired) had been an honorary chairman since about 1949. Smith and Moulton have each been a "sponsor" of respondent - Smith since about 1950 and Moulton since about 1945.

[fol. 40]

It is clear from the entire record as well as their own testimony that neither Smith nor Moulton has been at all active in the actual management, direction or supervision of respondent.[1] Therefore, their positions in the organization have no substantial relevancy to the precise issue of the extent that the organization is managed, supervised or directed by Communist Party functionaries or representatives. On the broader overall issue of whether the Communist Party dominates or directs respondent, both Smith and Moulton testified to the effect that they accepted their positions because of sympathy for the foreign born and a belief that respondent was working in the best interests of the foreign born and of the United States, and that they were elected to their positions (the inference sought to be made that the Communist Party had nothing to do with it, that no one put them on the list of sponsors or put them in as honorary officers.)

Yet, Moulton knows absolutely nothing, according to his testimony, about how he was selected and elected. On cross-examination it was developed that he was not a candidate for the office, and on being asked whether someone invited him to serve, he merely replied that "I was elected and accepted it." (Tr. 7052.) The first that he knew he was being considered for honorary co-chairmanship was when he was advised that he had been elected. He implied that he accepted the office "to help out and be nice" and testified that "I didn't ask any questions." (Tr. 7053.)

Smith also, according to her testimony merely "was asked to be a sponsor, and I accepted." (Tr. 3979.) She then decided to go to the annual conference in Chicago because "I wanted to know what I was sponsoring in more detail than I did know." (Tr. 3996.) When she sent word to the New York office that she was going to be in Chicago and would like to be at the conference, "someone" wrote and asked if she would speak and "they," she doesn't remember who, then wrote her a letter asking whether she would allow her name to be offered in nomination as a co-chairman, which she did. (Tr. 3997, 4001.) Smith was a sponsor of a Citizen's Emergency Committee formed for the specific purpose of defending 16 Communist Party officials on trial for violating a Federal criminal statute. At a meeting in Detroit, Michigan in December 1952, of the American Committee or the Michigan Committee for

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[1] Moulton has never attended any meetings or banquets of respondent and has never visited respondent's office. Smith had no desk at the office; she simply visited the office occasionally; and she did not know who performed the duties of naturalization aid director or general counsel. Her position as honorary chairman of the New England Committee "was really just a matter of giving my name" and she never worked for them. (Tr. 4193.) The record as to both Smith and Moulton bears out Moulton's observation that most of the work of any organization is "rather independent of honorary chairmen." (Tr. 7052.)

[fol. 41]

Protection of Foreign Born, at which Smith presided, one Nat Ganley, under indictment under the Smith Act, in giving a speech said that he was a Communist and proud to be a Communist, and Smith stated that America needs more loyal Communists like Mr. Ganley. Smith wrote a letter to Federal District Court Judge Medina, during the time he was presiding over the trial of top Communist Party leaders, to the effect that it was not to anybody's advantage to put a martyr halo around the Communist Party leaders. Smith believes that if the executive secretary of the Michigan Committee was a member of the Communist Party it makes no difference as long as "he did his job for us." (Tr. 4365.)

We find on this record that the fact that Smith and Moulton are honorary co-chairmen of respondent, and the fact that they have carried out a few activities in behalf of respondent's work in connection with the foreign born, are not necessarily inconsistent with respondent being dominated and controlled by the Communist Party and operated for Party purposes.

We now examine the evidence as to Communist Party affiliations of those persons active in the local branches of respondent. The record indicates, and respondent did not present any substantial evidence to the contrary, that the persons holding the positions of executive secretary in the branches have, like Green in the national organization, been primarily and principally active in the management, direction, and supervision of the work and activities on the branch level.

The executive secretary of the Northwest Committee Branch (Washington Committee for Protection of the Foreign Born) at the time of the hearing was Marion Kinney who assumed the office in 1953. Marion Kinney was identified as a member of the Communist Party and as having been assigned by the Communist Party in late 1948 or early 1949 to organize and get the Northwest Committee under way. Kinney met with Communist Party officials and received instructions from them on organizing this committee and reported her progress in the assigned task.[1] According to the testimony of Abner Green, one Kenneth Howard

[1] Petitioner's witnesses Barbara Hartle and Clark Harper both testified to the Party interest in organizing the Northwest Committee and to the assignment by the Party of Marion Kinney in that connection. The testimony of these two witnesses was unrebutted and undenied. We have considered the additional cross-examination of Harper on the basis of a statement given by him to the FBI on June 7, 1955 (Resp. Ex. 276) and find no basis for discrediting his testimony, particularly in view of the absence of contradictions, the lack of rebuttal or denial of his testimony, and the corroborative effect of Hartle's testimony. The fact that Harper's statement to the FBI was not as detailed as his subsequent testimony here, and the fact that the events as to which he testified were not the subject of earlier, contemporaneous reports to the FBI were explained by the witness.

was the first executive secretary of the committee and he was succeeded in 1949 by Lenus Westman. In 1951, Dr. H. J. Phillips succeeded Westman as executive secretary and Mabel Conrad became treasurer. H. J. Phillips and Mabel Conrad, as well as Marion Kinney, were identified on this record as members of the Communist Party.

The only persons shown on this record to have been active leaders of the Western Pennsylvania Committee were Evelyn Abelson and Bess Steinberg. Abelson became executive secretary when the Committee was organized in December 1953. She was executive secretary at the time and arranged a meeting for Professor Louise Pettibone Smith to speak during Smith's tour on behalf of respondent in early 1954. Meldahl received a written invitation to a meeting of the Western Pennsylvania Committee from Abelson in late 1955. Abelson and Steinberg were the people in the office and contacted by respondent's witness Peter Soldo in connection with deportation proceedings against his father as a former Communist Party member. Bess Steinberg was executive secretary at the time of the hearing.

Hardin testified without contradiction or rebuttal, and we find that he attended closed, policy-making meetings of the Communist Party with Bess Steinberg and that he saw her at 30 or 40 district conferences or district committee meetings of the Party. Hardin also testified, again without contradiction or denial, and we find that in 1951 Steve Nelson, chairman of the Communist Party District 5, told him to collect Communist Party dues and turn them over to Evelyn Abelson; that Nelson also stated that "When Abelson gives you orders, they will be orders from the Communist Party." (Tr. 344). Hardin actually collected Party dues at different times and turned the money over to Abelson. Prior to this, Hardin had seen and talked to Abelson at Communist Party meetings. Thus, the leadership of the Western Pennsylvania Committee has been by Communist Party members Abelson and Steinberg.

The only persons shown to have been active in the leadership of the New England Committee were Ruth Hillsgrove and Olive Sutton. Ruth Hillsgrove was executive secretary from 1952 until succeeded by Olive Sutton, who had been treasurer as late as February 1954. Hillsgrove was identified on this record as a member of the Communist Party.

While the record is not clear as to the date that the Michigan Committee was established, the evidence does show that early in its existence Saul Grossman was its executive secretary and was still an officer at the time of the hearing. Grossman was identified on the record as a member of the Communist Party. One Peggy Wellman was

[fol. 43]

administrative secretary of the Committee at the time of the hearing and she too was identified as a member of the Communist Party.

The Los Angeles Committee had as its leader from 1949 to 1951, one Delphine Smith, identified on the record as a member of the Communist Party. Petitioner's witness Miller became recording secretary of the Los Angeles Committee in late 1950 (at the suggestion of the F. B. I.) and was later recruited into the Communist Party by one Morris Goodman, a functionary of the Committee, who approached the subject after a meeting of the Committee and told Miller that having seen how conscientiously she worked for the Committee, he thought she would be an asset to the Party.

A number of various publications issued by respondent and showing the names of national or local functionaries were received in evidence. In no instance was Abner Green or any of the other persons that the evidence showed were Communist Party members so identified in the publications. Green was the only one of the persons shown to have been active in managing respondent who appeared as a witness.

This record requires the conclusion that the effective management, direction, and supervision of the local branches of respondent are substantially and primarily performed by and are under the control of members and representatives of the Communist Party. In view of our findings supra as to the leadership of the national organization it follows that the entire organization (national and locals) is effectively under the management, direction and supervision, and controlled by members and representatives of the Communist Party.[1]

Organization and Purposes

The facts on the Communist nature of respondent's leadership and direction being established we consider next the evidence on the organization, aims and purposes of respondent, particularly as related to or connected with the programs and objectives of the Communist Party regarding the foreign born.

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[1] Further evidence establishing this appears from various of the facts found under subsequent subheadings, such as the facts showing that these Communist Party people who have been the leaders of the respondent have constantly and consistently formed and promulgated views and policies of respondent in line with and without deviation from the views and policies of the Communist Party on the particular subject matters involved. In reaching the conclusion on the management and control of respondent we have considered and reject respondent's contention that the organization has been controlled by the annual conferences. See infra pages 41 - 42.

[fol. 44]

The record shows that the Communist Party of the United States has had a continuing policy toward the foreign born. The aims and purposes of the Party have been: (a) to seek to prevent the denaturalization and deportation of officers and members of the Party, and (b) to win the goodwill of the foreign born and obtain from them adherents to and support for the Party and for Party programs. The record also shows that it was the policy of the Communist Party to carry out and advance these aims and purposes through and by an organization separate from and not a part of the Communist Party as such. Illustrations of the facts establishing these findings will now be set forth.

Evidencing a general policy to win the goodwill of the foreign born were the adoption at the ninth convention of the Party, in 1936, of a platform which included the plank that the "infamous policy of deportation of foreign-born workers must be stopped" (A. G. Ex. 7, p. 2); and the adoption by the Party in 1948 of a platform which called for ending "persecution and deportation of the foreign born" (A. G. Ex. 227, p. 941).

The purpose to win the foreign born to the Party and to win their support of Party aims and objectives was evidenced by a declaration made at the eighth convention, in 1934, that "the foreign born workers constitute a revolutionary factor of the utmost importance." (A. G. Ex. 1, p. 701.) Means were outlined for "drawing the foreign born workers into the main stream of the class struggle, into the Communist Party and the mass organizations, particularly the trade unions." (Ibid, p. 709.) The continuation of this purpose was evidenced and the role to be played by respondent was indicated, inter alia, by the testimony of petitioner's witnesses Hartle and Harper, both of whom held high offices in the Party's Northwestern United States organization at the time about which they testified.

Hartle showed that at meetings in 1948 and 1949 of the Communist Party Northwest District Committee and also of the Party District Board, there were discussions about forming a branch of the American Committee for Protection of Foreign Born, which branch was needed to defend Party members who were threatened with deportation, and in order to attract the support of a certain sector of the population to the Communist Party line who were interested in the problems of foreign born persons. Harper showed that in late 1948 or early 1949, at a meeting of the Party District Committee, Henry Huff, the Party's highest official in the northwest district, spoke at length on the need for setting up a branch of the American Committee in order to protect "our foreign born comrades" and to help build the Party. (Tr. 2977.)

In addition to showing the Party policies to win over the foreign born and to seek to prevent the deportation of Party officers and members, the

[fol. 45]

above is a part of the evidence showing that it has been the practice of the Party to carry out these policies through so-called non-Party, independent organizations. Other evidence of record sheds further light on the existence of such a practice. For instance, petitioner's witness Hacker established that in the early 1930's there existed in the United States an organization named International Labor Defense ("ILD"). It was the American section of the International Red Aid which had its headquarters in Moscow and which was the parent organization of the various Communist defense organizations. Final policy decisions in the ILD were made by a Communist fraction in the organization or by Robert Minor, a Party member. The functions and purposes of the ILD were to carry out mass and legal defense of persons who were arrested in connection with what was termed working class activities. This included supplying legal counsel, the organization of mass protest demonstrations, the circulation of petitions, and the raising of funds to carry on these activities. The ILD was also utilized for the recruitment of members into the Communist Party.

During the year 1932, as the result of a suggestion made by Robert Minor, a member of the Central (governing) Committee of the Communist Party and liaison man between the Party and ILD, there was set up a Council or Committee for Protection of Foreign Born to take over and relieve ILD of the technical work (legal defense, bail, etc.) in deportation cases with ILD continuing the activity of arranging and holding mass meetings in order to dramatize the cases. Of the deportation cases handled by ILD, about 80 per cent involved charges by the Immigration Service that the defendant was or had been a member of the Communist Party.

The continuation of the Party policy to carry out this work through a separate organization from the Party itself was evidenced, among other things, by an official Party statement in 1951 that:

> "Comrade Foster warned us at our 1948 Convention not to allow our Party to become a defense organization. He spoke wisely from the sum total of experience in this field. A separate permanent non-partisan organization devoted exclusively to this purpose is required." (A. G. Ex. 229, p. 126.)

We come then, against the background of Communist Party policies and objectives regarding the foreign born, including the defense of foreign born members of the Party itself, to consideration of respondent's organization and purpose.

Petitioner's witnesses Harper and Hartle showed that the need for the branch of respondent in the Northwest United States was the subject of

Communist Party business in late 1948 and early 1949. (Supra.) Other evidence corroborates their additional testimony that a branch was actually formed shortly after the Party plans for it were made. Marion Kinney, a Party functionary, was designated by the Party to organize the branch in the Northwest and to assume an office in it. Kinney was given instructions by Party officials on organizing the branch and after it got started she reported to the Party officials on her progress in the new organization. In 1951, Kinney was further relieved of her other Party duties in order to do more work in this Northwest Committee for Protection of Foreign Born. Kinney was the executive secretary of the commitees at the time of the hearing.

The evidence showed and we find that the Communist Party took the initiative in the formation and organization of the Northwest branch of respondent in order to have an organization to defend Party people subject to deportation and to win the support of the foreign born to Party programs and aims.

Petitioner's witness Baldwin, as part of her work in the Communist Party was assigned by her Party section and attended as its representative, a national conference of the American Committee held in Detroit, Michigan, in the winter of 1949.[1] Baldwin served as a registrar at the conference. The Michigan Committee for Protection of Foreign Born participated in the conference. Baldwin testified to the effect that in the State of Michigan an organization known as the Civil Rights Congress was the organization to which were referred Party members involved with law enforcing agencies and having immigration and naturalization troubles; that in the fall of 1948 the workload of the Civil Rights Congress became too heavy and a special committee was set up to take care of the foreign born of the Communist Party; and, that the name of the committee was the Michigan Committee for the Protection of the Foreign Born. The substance of Baldwin's testimony is credited.[2]

Petitioner's witness Glatis was assigned in 1950 by the Communist Party in New England to a "sleeper basis" and told to work entirely through Communist-front groups rather than any open activity as a member of the Communist Party. In connection with this work for the Party Glatis attended a meeting in Boston, Massachusetts, in about May of 1950, which was the founding meeting of the New England Committee for Protection of Foreign

1 Indicative of the relationship between the various local committees and the National Committee (supra) are the facts that in 1949 one Lenus Westman was a director of the national and also an officer of Northwest, that he attended this conference and thereafter reported on it to meetings of the Northwest Committee.

2 There is conflicting evidence on when the Michigan Committee was first organized. The point is not of substantial materiality.

[fol. 47]

Born. A number of the 25 or 30 people present were shown by the evidence to have been members of the Communist Party. Glatis subsequently attended two meetings of the New England Committee, one in March of 1953 and the other around February of 1954. He received literature of the Committee through the mail and literature of the American Committee was available at meetings sponsored by the Communist Party, which Glatis attended in the period 1950-1952. Based upon his attendance at the meetings, and upon the literature which he received, and upon discussions during his Communist Party membership, Glatis testified that the purpose of the New England Committee was to defend those who were subject to deportation as a result of being members of organizations that were dedicated to the overthrow of the Government by force and violence.

Petitioner's witness Lautner in 1945 was put on the credentials committee of a conference held by the American Commiteee and was elected to the Executive Committee although he was not there and was not consulted prior to being made a member of the Executive Committee. His explanation was that he was at the time on the Nationality Group Commission of the Communist Party and being placed on the Executive Committee of the American Committee for Protection of Foreign Born without being solicited was the way the Party works. Lautner testified that the American Committee "functioned to give legal aid and legal protection for members of the Communist Party, and particularly leaders of the Communist Party, who had difficulties with immigration and naturalization cases or problems." (Tr. 1004.)

Petitioner's evidence on the purposes was contradicted by respondent's evidence. Respondent's witness Green did not deny, and affirmatively stated, that one of the activities of the American Committee is to defend members and former members of the Communist Party involved in deportation proceedings. But Green stated that the purpose is not to give aid and support to the Communist Party, or to promote the objectives of the Party. Green testified that it is the position of the American Committee that laws or court decisions which deprive noncitizens of their rights because of their membership, past or present, in the Communist Party most certainly affect the status of the rights and welfare of all noncitizens or affect the rights and the welfare of naturalized citizens, and at the same time establish the basis whereby the rights and welfare of native-born citizens can be undermined and destroyed.

Green testified similarly on the matter of the denaturalization or revocation of citizenship of persons on the grounds that at the time of naturalization they had been members of the Communist Party. On the matter of immigration, Green testified to the positions of the American Committee that a reasonable number of immigrants be admitted each year and that the statutory quotas are discriminatory and should be abolished for more flexible means

[fol. 48]

Green gave illustrations of non-Communist cases handled in the various fields of deportation, immigration, and naturalization.

On cross-examination, Green refused to answer, on constitutional grounds, the question whether he at any time since he had been executive secretary conferred with any functionary or official of the Communist Party concerning the affairs or policies of the American Committee.[1] Petitioner's witness Lautner testified, without contradiction or denial, and the testimony is credited, that Abner Green, and also Harriet Barron, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to the American Committee, and fitted Party policies into the functions of the American Committee.

Tending to corroborate this testimony of Lautner, and further indicating that respondent is the organization used by the Party to carry out Party objectives regarding deportees and the foreign born was the report made at the 15th National Convention of the Communist Party, as printed in the Party organ, Political Affairs, for February 1951. (A. G. Ex. 229.) This party report stated that "The fighting spirit of the I. L. D. is a proud heritage" and that:

> "The Civil Rights Congress, under the able leadership of William Patterson and Aubrey Grossman, is the logical inheritor of the I. L. D's record and experiences, and the Committee for the Protection of the Foreign Born, led by the devoted and indefatigable Abner Green, performs invaluable service in the fight against the government's deportation drive. It is the duty of all progressives to appreciate the need of these organizations, help raise funds, and support their work."[2] (A. G. Ex. 229, 127.)

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1 We have found, supra, based upon other evidence, that in 1953 Green met with the chairman and other officers of the Northwest District of the Communist Party and discussed with the Party district Chairman the work of the American Committee and the progress of the Northwest Branch. We have also found, supra, that sometime in the period 1948-1950, the chairman of the Party Northwest District reported at a meeting of the Party District Board that he had met with Green and Marion Kinney on the occasion of a visit that Green made to Seattle as the national head of the American Committee.

2 Additional evidence of Communist Party support of and favorable publicity for respondent is set forth infra.

[fol. 49]

Still further evidence relevant to the real purpose of respondent was the facts established by petitioner's witness Mary Markward. She first learned about respondent through reading about it in the Communist Party press. Subsequently, around 1946, respondent was discussed at various meetings of the Communist Party, attended by Markward, particularly at the District level, as an organization that did from time to time assist Party members. In 1948, at the Communist Party office in Washington, D. C., Dorothy Strange, a Party functionary, told Markward that she (Strange) was working for respondent and that the work she at that time was doing with respondent was just as important to the cause of the Communist Party and was helping the Communist Party just as much as any work anybody was doing as even a functionary of the Party. Strange, who had been elected to the Communist Party district committee and district board in 1945 and had worked in the Party Office in Washington, D. C., was in Washington at the time on a mission for respondent. For the years from 1949 through 1952, when the office was discontinued, Dorothy Strange held the position of Naturalization Aid Director in respondent. (Supra.)

Respondent's constitution provided as to purpose that:

> "The purpose of the American Committee shall be to perpetuate for the foreign born the fundamental American concepts of equality, regardless of race, color, nationality, creed, or place of birth, and to preserve the fundamental ideals of liberty and hospitality which serve as the guarantees of democracy to all Americans.
>
> "The work of the American Committee shall be to promote better relations and understanding between native and foreign born by means of education; to encourage and facilitate the naturalization of non-citizens; to prevent discrimination against non-citizens or foreign born citizens because of their nationality, political, economic or religious belief, or lack of citizenship; to prevent the destruction of American families by the threat of deportation; to maintain the traditional right of asylum for political and religious refugees in the United States and to actively work for the solution of the problems confronting the foreign born in the United States.
>
> "The American Committee shall be an unaffiliated, non-membership, independent, non-partisan body cooperating with all other organizations interested in any phases of its program." (Resp. Ex. 88.)

[fol. 50]

Although not indicative standing alone, the fact that the constitution provides that the organization shall be "unaffiliated" and "independent" is consistent with the policy of the Communist Party, supra. Likewise, the provisions on the purpose and work when read in the light of this record are not inconsistent with a real aim or objective of aiding and supporting the Communist Party. Respondent's witness Reverend Moulton testified that "as far as my observation and knowledge goes" respondent's activities have been in furtherance of the purpose set forth in the constitution; that the work has been consistent with the United States Constitution; and that he has never observed anything which would lead him to the opinion that respondent is dominated by the Communist Party. (Tr. 7020-23.) It is to be noted that for the most part Reverend Moulton's relationship with respondent was by mail and he never attended any of its meetings or banquets.

Respondent's witness Louise Pettibone Smith testified to the effect that respondent defended anybody, including Communists, in pursuance of its own program and not that of the Communist Party. Respondent's witness Reverend Charles A. Hill testified that the literature of respondent has been consistent with the purpose set forth in the constitution and that the activities can be consistently supported by persons who disagree with Communism.

This leads us to an examination of the literature of respondent as it may indicate purpose. One consideration revealed from a review thereof is that respondent's support and defense of Communists has not been limited to those who were foreign born or who were involved in deportation or naturalization cases and has gone beyond the impression given by respondent's witnesses.[1] The evidence includes that now set forth.

In December of 1949, respondent went beyond the normal defense of the foreign born by supporting Communist Party functionaries Fred Estes and James Green, both of the State of Texas. Estes was sentenced to a jail term and fined by the Federal District Court for refusing to produce local Communist Party books at immigration hearings held to establish whether seven noncitizen residents of Dallas, Texas, were members of the Communist Party. James Green, Texas secretary of the Communist Party, was found in contempt of court for refusing to testify before an immigration hearing as to whether two residents of Houston, Texas, were members of the Communist Party.

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1 We consider under the next subheading respondent's actual activities in the defense of persons involved in denaturalization and deportation cases. The facts therein are also indicative of respondent's true purposes.

[fol. 51]

Respondent was active in supporting and defending one Gerhart (Gerhardt) Eisler in various proceedings. Petitioner's witness Lautner knew Eisler in 1935 as the representative of the Communist International in this country. Eisler was a well known foreign Communist. In the late 1940's, while Eisler was in this country. he was tried and convicted for willful contempt of the Congress of the United States. (Eisler v. United States, 170 F. 2d 273, 338 U.S. 189.) He was also tried and convicted of knowingly making false statements in an application to the Secretary of State for permission to depart from the United States. (Eisler v. United States, 176 F. 2d 21.) He was also arrested for deportation.

On the direct examination, counsel for respondent read to its witness, Abner Green, the allegation in the petition of the Attorney General that respondent actively supported the Communist Party in its efforts on behalf of Gerhart Eisler. Green testified that respondent defended him only in respect to the question of deportation and in respect to the questions of bail in deportation proceedings; that in so doing respondent was not advocating or following the views and policies of the Communist Party; and, that respondent was supporting its own program and the Bill of Rights - the Constitution of the United States. Conclusive evidence, on the other hand, shows that, contrary to Green's testimony, respondent supported Eisler and filed a legal brief in his behalf in the contempt of Congress case, in addition to defending him in the deportation matters.[1] This goes beyond the normal, avowed purposes of respondent.

While appeals were pending on his convictions in the criminal cases, Eisler was arrested on a warrant for deportation. He and other persons, two of them high officers of the Communist Party, U.S.A., were held on Ellis Island. Respondent actively participated in campaigns for the release of the five on bail and to "Let Gerhart Eisler Go Home." (Tr. 5432-43, A.G. Ex. 244.) After being released on bail, Eisler fled the country. Even

[1] Eisler became a fugitive while his conviction for contempt of Congress was pending review in the Supreme Court of the United States. The Court in Eisler v. United States, 338 U.S. 189, ordered the case removed from the docket. Mr. Justice Murphy, in a dissenting opinion at p. 193 characterized Eisler as "an alien, a Communist, and a fugitive from justice."

[fol. 52]

the campaigns of respondent on behalf of Eisler which were designed to avoid his being held on deportation charges and immediately to let him leave the country, seem to exceed the avowed purpose of respondent. Moreover, in carrying out these campaigns, respondent advanced positions similar to those advanced by the Communist Party.

For instance, the Party took the position that the fight for freedom of Eisler was "the battle to preserve political rights" (A. G. Ex. 281), that the government was exhibiting cynical cruelty in the "persecution" of Eisler and other Communist leaders (A. G. Exs. 282, 283), and criticized the Department of Justice drive against Eisler and other Communists. Likewise respondent criticized the Attorney General saying he "displayed a contempt for the principles of democratic procedure" in arresting Eisler (A. G. Ex. 185); complained of the Department of Justice's procedure in arresting Eisler as "a new tactic to harass and intimidate the American people" (A. G. Ex. 194); stated that the Justice Department used deportation as "a repressive weapon" (A. G. Ex. 199); and complained as the Communist Party did of the refusal of the department to permit Eisler to leave the United States. Even Abner Green's testimony, supra, that in defending Eisler in the deportation proceedings respondent was supporting the Bill of Rights, was consistent with the position of the Communist Party that "To advocate action against Communists is to destroy the Bill of Rights." (A. G. Ex. 281.)[1]

The Eisler case is but one of a number of instances shown by the record where respondent's views and policies have been similar to and have not deviated from the views and policies of the Communist Party.

Like the Communist Party, respondent has taken and advanced the position for repeal of the Smith Act. Among the evidence of the line taken by the Party in its efforts to arouse the public against the Smith Act was a statement issued in October 1951 by the National Committee of the Party condemning the refusal of the Supreme Court of the United States to grant a petition for rehearing for the Party leaders that had been convicted under the Act, and including the following:

> "The court of last appeal is the American people. They can wipe the Smith Act off the books now as they have many other obnoxious laws in the past.
>
> * * * *

1 Green refused on Fifth Amendment grounds to answer if he knew what position Eisler held in the Communist Party or whether he had attended a closed Party meeting with him in Pittsburgh, Pennsylvania, in 1948.

[fol. 53]

> "This decision signalizes that Wall Street is ready to go full speed ahead into a bloody war and a brutal fascism. It is a cause for the gravest alarm. It must alert the entire labor movement, the Negro people, the cultural and religious forces, to unite in a renewed and mighty effort to repeal the Smith Act. It calls for united efforts to repel increasing terror in our country and to halt Smith Act mass arrests." (A.G. Ex. 279, p.3.)

About six months after the issuance of the above-mentioned Party statement a publication called National Guardian contained an article by Abner Green, written as executive secretary of respondent, condemning the Supreme Court's upholding of certain deportation cases based upon past membership in the Communist Party. (A.G. Ex. 169.) Green declared that "any and every person who believes in peace and democratic rights [is] today threatened by un-American reaction" (Ibid). His article continued with:

> "At the base of this attack is the implementation of the 1940 Smith Act in the life of our country, utilized to jail leaders of the U.S. Communist Party and arrest dozens of others solely because of their political opinions.
>
> * * * * * *
>
> ". . . The Supreme Court majority has subordinated the people's interests to the inciters of war hysteria and proponents of a police state. But the court of last resort, the people itself, is still to be heard from ---. . . ." (Ibid.)

In addition to advancing positions similar to those of the Communist Party regarding the Smith Act, the record shows, contrary to respondent's contention (exception 51), that respondent's opposition to the Smith Act has not been limited to the "anti-alien" provisions. For example, at one of its national conferences respondent went on record urging support of an organization named Civil Rights Congress in defense of the Communist Party officials indicted for violation of the conspiracy provisions of the Smith Act. Also, various exhibits showed resolutions and other actions of respondent seeking repeal of the Smith Act which were not limited to the alien provisions or even singled them out for specific mention.

In 1953, respondent circulated a booklet written by Abner Green seeking to rally the people behind a campaign for repeal of the "hated"

[fol. 54]

Walter-McCarran Act. (Resp. Ex. 191.) Contained therein was the statement that: "The Smith Act prosecutions and jailings of Communist Party leaders bolster the McCarthys and Veldes." (P. 47.) Green was asked on cross-examination what relation there was between the Smith Act prosecutions and the work of respondent. He replied that the relationship "exists in the social sense," that the Smith Act prosecutions "helped to contribute to the hysteria, which served to intensify the persecution of the foreign born." (Tr. 6726.)[1]

This booklet also contained the position that:

> "The increased outbursts of anti-Semitism in all parts of the country, symbolized by the rotten frame-up of the Rosenbergs, feed the bigots and the hate-mongers." (Resp. Ex. 191, p. 47.)

The cross-examination of Green on this was as follows:

> Q. Now, Mr. Green, is there any deportation or immigration or denaturalization or naturalization aspect of the Rosenberg case?
>
> A. There is no direct aspect. There is the indirect aspect that the kind of treatment accorded the Rosenbergs, the frame-up to which they were subjected, helped to create, to stimulate anti-Semitism, and also hysteria in the country, as a result of which it was a lot easier for the Justice Department to proceed to arrest several hundred non-citizens than it would otherwise have been in the course of the hysteria that was generated.
>
> Q. Are you familiar with the Rosenberg case?
>
> A. Somewhat, yes.

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[1] On direct examination Green sought to give the impression that respondent's opposition to the Smith Act was limited to the alien provisions. He testified that respondent did not campaign against the enactment of the "sedition section" and thereafter did not campaign for the repeal of the sedition section (dealing with the advocacy of the overthrow of the government by force and violence and membership in an organization that so advocates). (Tr. 5924.)

[fol. 55]

Q. Can you recall or do you know, Mr. Green, what the charges were in the Rosenberg case? You don't have to use legal language.

A. I think they were charged with being human beings and Jews.

Q. Are you being facetious now Mr. Green?

A. No, I am answering your question.

Q. There is no attempt there to be humorous?

A. Not in the slightest.

Q. Do you know, Mr. Green, that the Rosenbergs were charged with conspiring to commit espionage against the United States?

A. I know the Rosenbergs were murdered by the United States Government.[1] (Tr. 6730, 6731.)

The booklet (supra) also stated: "The increased prosecution of trade unionists under the Taft-Hartley Law provides ammunition for the enemies of the people"; and, "The vicious jim crow system and the national pattern of discrimination and genocide suffered by the Negro people strengthens McCarranism."[2] (Resp. Ex. 191.) Green conceded on cross-examination that there is nothing in the Taft-Hartley law that pertains to immigration or deportation or denaturalization matters.[3] His explanation was that Taft-Hartley affects deportation and immigration matters by generating hysteria and encouraging "the Justice Department to carry on forays on communities with FBI investigations and arrests and possible deportations." (Tr. 6732.) The Communist Party, as evidenced by Political Affairs for February 1951, had referred to the "straightjacket of Taft-Hartley" and advanced the position that "the persecutions of Communists and alleged Communists in trade unions under the Taft-Hartley Law" were among the corollaries to "direct attacks" upon the Party. Included

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1 See infra, the facts showing a similarity of positions taken by respondent and the Communist Party in attacking the United States Government.

2 We repeat, for emphasis, that this proceeding is not concerned with the merits of any positions taken or views expressed and that the merits of any positions or views are in no respect issues herein.

3 The Taft-Hartley law contained provisions requiring officers of labor organizations to file so-called non-Communist affidavits. (See section 9h, 29 U. S. C. 159 (h).)

by the Party among the "direct attacks" were deportations under the McCarran Act. (A. G. Ex. 229, pp. 127 & 129.)

The reference in the booklet (supra) to the Negro people is part of the evidence indicating that respondent has followed the Communist Party line in seeking to influence and win over the Negro people.[1] An approach by both organizations has been to link the Government's deportation activities with asserted lynchings and "Jim Crow" policies toward the Negro people claimed to have been carried out or sanctioned by the Government.

An early statement of the Communist Party's objective in connection with seeking to win over the foreign born appeared in a 1934 Party organ stating that the mass organizations

> ". . . must become levers in the hand of the Party for winning the majority of the working class. In this respect the language mass organizations must become the levers for moving the foreign-born masses to march shoulder to shoulder with their exploited brothers, the native Negro and white workers, in the class battles along the road of the working class way out of the crisis, along the road to Soviet America." (A. G. Ex. 1, p. 710.)

The record gives numerous instances showing that a consistent means used by the Communist Party in its efforts to win over the foreign born and others to Party causes and objectives has been by attacks upon the United States Government or branches thereof. At times the terms "reaction," "reactionary forces," "ruling class" (circles), and "American imperialism" (U. S.) have been used. For example:

> "We [Communist Party] have to be alert to all sorts of tricks, through which pro-fascist reaction attempts to penetrate our ranks and undermine our Party by sending into it spies, agents provocateurs, and traitors to the working class." (A. G. Ex. 161, p. 24.) (Emphasis added.)

> ". . . the ruling circles of our country, in the guise of anti-Communism, are exerting the full force of state power in an all-out drive to weaken and undermine the fight for wage increases, pensions, upgrading for Negro

1. As early as 1934, the Party had the program to build the Party by "'winning . . . the native white and Negro workers'" but without ignoring "the role of the foreign-born masses, ..." (A. G. Ex. 1, p. 701.)

[fol. 57]

workers; to smash the fight against speed-up and ultimately to re-establish the open shop and destroy free trade unionism." (A. G. Ex. 161, p. 22.) (Emphasis added.)

"Gerhart Eisler, refugee German Communist, was sentenced to from one to three years imprisonment by Federal Judge James W. Morris. Eisler, before he was sentenced, gave a dramatic exposure of the reactionary political maneuvers behind his conviction. . . ." (A. G. Ex. 285, p. 5.) (Emphasis added.)

"Reactionary forces, roused and organized by Hearst and the Liberty League, and striving to seize the Government fully." (A. G. Ex. 7, p. 1.) (Emphasis added.)

"The agents of the ruling class within their ranks. . . mislead them [the foreign born] along the line of class-collaboration, of submission before the bosses." (A. G. Ex. 8, p. 4.) (Emphasis added.)

"The ruling class has decided it must smash this unity [native, foreign-born, white, and negro workers]. It has begun its drive." (A. G. Ex. 89, p. 1.) (Emphasis added.)

"The drive to stir up hysteria against the millions of foreign-born is a calculated effort to break down the resistance of the majority of the people who oppose our country's involvement in the imperialist war." (A. G. Ex. 228, p. 626.) (Emphasis added.)

Among the Party attacks upon the Government have been to condemn what the Party called attempts to "strangle the people's movements" in foreign countries. (A. G. Ex. 232.) The Daily Worker for January 1, 1952, contained the following:

"The voices and actions of the American people in 1952 assure the world that we and our country are not identical with the corrupt and desperate American ruling class, but our contempt for them is identical with that of people elsewhere." (Ibid.)

[fol. 58]

Respondent has likewise condemned the United States Government in the same activities condemned by the Communist Party. In 1945, Abner Green made a "report" as executive secretary of respondent, at the eighth annual conference. (A.G. Ex. 259.) He was critical of "American poll-tax Democrats" and "Herbert Hoover Republicans" who he said were intervening against the people of Europe. (P. 12.) He was critical of the "domestic and foreign policies of the government" as endangering the welfare of all Americans. (P. 12.) He used the various terms, in describing American leadership, of "camp of native reaction," "reactionary elements," and "fascist propagandists." (P. 13.) Among the statements in his report were:

> "The foreign born are justifiably concerned with the direction that is being taken by the United States Government in its dealings with the recently-liberated peoples of Europe and the Orient." (A.G. Ex 259, p. 12.)
>
> * * * * * * * *
>
> "The failure of the Department of State to pursue a policy of supporting the democratic people's movements in Europe and the Orient undermines the unity of the American people. Our safety and our security rests on our winning for the people of the liberated countries an opportunity to establish governments free from reactionary interference. (Ibid.)
>
> * * * * * * * * *
>
> " . . . we must realize that these fascist propagandists are exceedingly clever. For instance, they appeal to Polish-American home-owners in Detroit with their anti-Negro propaganda. . . . They drag out all of Hitler's lies against the Jews, against the Soviet Union, and against the threat of so-called communism, which covers everything progressive and everything decent in American life." (P. 13.)
>
> "It is to our own interests to protect the foreign born from facist influences, to expose and to fight these forces and their poison of anti-Semitism, anti-Negroism, and anti-Sovietism. . . . fighting the reactionary forces among the foreign born will help weaken native reaction. It is our

[fol. 59]

responsibility to help the progressive democratic forces in the foreign born communities fight this poison, to expose and to defeat these enemies of democracy." (P. 13.)

In 1951, respondent issued a booklet written by Abner Green entitled "the deportation drive vs. the bill of rights." (A. G. Ex. 56.) It combines an appeal for support in opposition to the McCarran Act [codifying the immigration and naturalization laws] with attacks upon so-called "reaction in the United States" (p. 7) or "American reaction" (pp. 11, 19), and with defense of the Communist Party (p. 7). Using the usual theme that the rights of "all sections of the American people" are "under serious and dangerous attack," (p. 6) respondent's booklet declared:

> ". . . on December 4, the United States Supreme Court will hear argument on a case that may well decide the whole future course of American democracy when the appeal of the leaders of the Communist Party is heard and the constitutionality of the 1940 Smith Act is tested. At the same time, we witness new attempts to illegalize the Communist Party, as the Justice Department puts into operation the registration sections of the 1950 McCarran Law.
>
> "Our concern is with the status and rights of those Americans who are foreign born, since reaction in the United States has always attempted to use the foreign born as a scape-goat and as an additional means for dividing the people of this country.
>
> "We must develop that kind of program of action, and make possible that kind of defense of the rights of foreign-born Americans, that will help defeat the current attack on the rights of the foreign-born and contribute thereby to the defeat of the reactionary attack on the civil rights of all Americans." (P. 7.)

Defense of the Communist Party was woven into a booklet written by Abner Green in 1950 and circulated and sold by respondent. (A. G. Ex. 166.) Entitled "The Deportation Terror A Weapon to Gag America," the booklet concentrated on deportation proceedings against one Peter Harisiades for past membership in the Communist Party as an organization advocating the overthrow of the Government by force and violence. (We further consider, infra, respondent's defense of Harisiades.) The following are excerpts from the booklet's presentation of what was involved in the Harisiades case:

[fol. 60]

"In finding that the Communist Party is an organization that advocates the overthrow of the government of the United States by 'force and violence,' the Justice Department could not point to one instance since it was organized in 1920 when the organization actually advocated force or violence or taught its members any such beliefs. (P. 9.)

"The Justice Department based its findings on the literature circulated by the Communist Party, the Marxist classics, some of which are more than 100 years old. (P. 9.)

"The record in the Harisiades case is hundreds of pages long. Peter Harisiades testified at length as to his beliefs and as to what the Communist Party taught him and advocated during the years of his membership. William Schneiderman, an American citizen, whose citizenship the United States Supreme Court preserved in 1945 in its historic decision after Wendell Wilkie argued in his behalf, also testified in the Harisiades hearings. (P. 9.)

"Mr. Schneiderman, who is California State Chairman of the Communist Party, discussed the principles of his organization, denied that it believes in, or ever believed in, force or violence, and completely exposed the Justice Department's charges as political persecution. (Pp. 9 & 10.)

"But, nowhere in these hundreds of pages did the Justice Department present so much as one iota of proof that the Communist Party believes in, or advocates, the overthrow of the government of the United States by 'force and violence.'" (P. 10.)

Under the heading "Part of General Attack" the following appeared:

"The deportation drive and the hysteria against the foreign-born are an essential part of the concentrated drive on the rights of all minorities in the United States and the general assault on the liberties of the American people. (P. 19.)

[fol. 61]

"Lynchings of Negro people in the South. . . . The 'loyalty' program for government workers. . . . The Hollywood 10. . . . Increased police brutality against the Negro people in industrial centers and against Mexican-Americans in the Southwest. . . . The Los Angeles 21 and the Denver 6. . . . Increased anti-Semitic propaganda. . . . The Trenton 6. . . . The attempt to jail the leaders of the Communist Party because of their ideas. . . . (P. 19.)

"These — together with the deportation drive — are part of the general attack on the rights of all Americans who believe in peace and the democratic way of life." (P. 19.)

The testimony of petitioner's witnesses as to the true purposes of respondent is strongly supported by the other findings made under this subheading. It is significant that respondent has taken and advanced views and policies on matters outside of and beyond the field of the foreign born; that in each instance of record such views and policies have been in areas involving either directly or indirectly the Communist Party of the United States and favorable to the Party; and, that in such views and policies as well as in its views and policies in the field of the foreign born respondent has paralleled the views and policies of the Communist Party and has not in any instance deviated therefrom. We find that the clear preponderance of the evidence establishes that the purposes of respondent have been to aid and support the Communist Party.

This finding is further established by the facts that emerge from the record as to the detailed work and activities of respondent, particularly in connection with the foreign born, which we now consider.

Activities

It is clear from the record that the legal and propaganda defense of individuals involved in deportation and naturalization cases has occupied a substantial part of the time, effort, and attention of respondent. Considerable time and effort have also been devoted to working to defeat existing laws in the fields of deportation, naturalization, and immigration; promoting legislation; and, opposing the administration of the laws in these fields.

In connection with these activities, respondent has issued many leaflets, pamphlets, flyers, and other material, and has published the newspaper-type periodical, The Lamp, as well as the occasional publication, Review of the Year.

[fol. 62]

The American Committee, national organization of respondent, has, for each year from 1937 to the time of the hearing (except in 1944 and 1946) held annual conferences. It has also sponsored various events such as: pilgrimages to Washington, D. C., in 1949 and again in 1951, at which there were picketing and demonstrations in behalf of certain deportees; banquets and ceremonies keyed to various aspects of deportation and naturalization work; and, speaking tours of officers of the organization in behalf of the organization and its programs.

The various local committees, branches of respondent, have sent delegates at times to the events of the national organization and have themselves held or sponsored various conferences, testimonial dinners and other affairs, such as: "Midwest Conference on Deportations"; festivals of nationalities; "California Conference to Defend the Rights of Foreign Born"; and regional conferences.

Illustrative of the general nature of respondent's publication The Lamp, the issue for "Dec., 1950 - Jan., 1951" (Resp. Ex. 270) includes: announcement of a pamphlet being sold by respondent discussing "the McCarran Law and the rights of foreign-born Americans"; announcement that argument in the appeal in the deportation case of Peter Harisiades had been postponed; birthday greetings to a list of "non-citizens who are among those facing deportation"; announcement of the sale of a leaflet "Deadly Parallel: 1920-1951"; articles entitled "National Conference Adopts Program and Elects Officers For Coming Year," "Joe Weber Conviction Reversed By Federal Court of Appeals," "Revocation Proceedings Initiated Against Tenth American Citizen," "More Serious Than 1920 Palmer Raids"; "McCarran Law Deportation Drive," "'Fight Deportation' Month To Be Observed March 1951"; "Prominent Individuals Join In Protests," "Organizational Activities"; and, the commendation of respondent for attorneys who had represented persons held without bail on deportation charges.

No useful purpose would be served in detailing the voluminous evidence of respondent's apparently tireless work on what it holds out to be issues confronting or affecting the foreign-born. One further illustration will suffice. Respondent's publication "Review of the Year 1950," a copy of which was put in evidence by petitioner (A. G. Ex. 25) summarizes the activities and work during 1950 in connection with noncitizens and naturalized citizens, and outlines the program for 1951 adopted by "the National Conference to Defend the Bill of Rights, which met in New York City on December 2 and 3, 1950" (p. 3). As shown by this publication, the work and activities during 1950 included: the legal defense, at deportation hearings and in appeals to the courts of individual deportation cases; efforts in connection with getting deportees released on bail; support of applications for naturalization, and opposition to revocations of naturalization; the publication of

[fol. 63]

material such as folders concerning various individual deportation cases; the issuance of petitions and other protests against the Government's actions in various deportation and naturalization cases; and a summary of "victories" or favorable decisions of the United States courts involving aliens. The program for 1951 as outlined in the publication followed the same general lines as the actual activities during 1950, with apparent emphasis in 1951 on seeking the repeal of the deportation, naturalization and immigration provisions of the 1950 McCarran Law.

A review of the evidence, both the documentary material and the oral testimony, shows that at every opportunity, in its publications and flyers as well as at its conferences and other affairs, respondent urged and appealed for public voluntary contributions to carry out its work and activities. Such review also shows a constant effort to attract people to respondent and to induce public support for its programs and activities, particularly by advancing the position that the interests and liberties of all Americans are affected by the Government's policies and actions involving the foreign born.

In past years, at least, respondent was successful in obtaining the good will and support of the public, including persons prominent in government, civic, labor and religious life. The annual conferences have been attended by as many as 300 to 400 people of various walks of life and these people have participated as speakers and approved the programs and activities of respondent in connection with the foreign born. The annual conferences have been open to the public and any individual or organization could pay a registration fee of one or sometimes two dollars and participate in the sessions of the conferences. Since 1949, no government officials or members of the Congress of the United States have sent messages to or appeared at respondent's conferences, as some had in prior years. Abner Green attributed this to the fact that the organization had been included on the Attorney General's list of subversive organizations under the provisions of the executive order establishing a loyalty program for Government employees. Respondent did not avail itself of the procedure for a hearing in connection with the listing by the Attorney General. Respondent's witness Soldo, whose father had been aided by respondent in connection with deportation charges, testified that had the Western Pennsylvania Committee (branch of respondent, supra) ever preached Communism to him, "I wouldn't be around there long." (Tr. 6301.)

Abner Green testified that the purpose of the annual national conferences has been:

> ". . . to serve as a general review of the work of the American Committee for Protection of Foreign Born during the preceding year, to discuss current problems

[fol. 64]

facing the organization, and, in addition, of course, facing the foreign born in the United States and to work out a general program for the coming year to serve as a guide for the work of the organization and the administrative staff and the officers in carrying out the program of the American Committee." (Tr. 4873.)

Green further testified that the national conferences have been the only body of the American Committee that have ever set the policies of the organization; that the conferences elected the officers; and, that the policies and decisions of the national conferences have been binding on the officers of the American Committee.

It appears to be true that those who have attended the national conferences have reviewed the general work and activities of respondent in connection with the foreign born, and have adopted programs for the coming year although limited to the fields of deportation, naturalization, and immigration. To the extent that Green's testimony, above, goes beyond this, the testimony is not in accord with the preponderance of the evidence.

The actual management, direction, and supervision of the work and activities of the organization on the national level have been carried out and conducted by Communists Abner Green and Harriet Barron with minimal, if any, participation by the other officers, regular or honorary. (Supra.) The management, direction, and supervision of the branches (local committees) have been by Communist Party members such as Ruth Hillsgrove for the New England Committee; Evelyn Abelson and Bess Steinberg for the Western Pennsylvania Committee; Saul Grossman for the Michigan Committee; Marion Kinney for the Northwest Committee; and Delphine Smith for the Los Angeles Committee. (Supra.) As on the national level, there is no evidence of any participation in the actual management, direction, and supervision of the work and activities of the branches by any other officers.

The constitution of the national organization, and the constitutions of those of the locals that are of record, provide for the delegation by the annual conference of full responsibility for carrying out the programs, and provide that the executive secretary (who on the national level has been Communist Party representative Abner Green for many years) shall be responsible for the work and activities in between the annual conference. The limited number of minutes of respondent's meetings put in evidence shows no officers present other than these administrative officers. Minutes of the January 16, 1951, meeting of the executive board of the Los Angeles Committee showed Delphine Smith in complete charge of the work, and specifically provided that:

[fol. 65]

"Delphine Smith gave a thorough report of reorganization plans that were discussed when Abner Green visited Los Angeles and also action that has been suggested for the immediate future. . . . The Executive Secretary will be empowered with full responsibility to take action immediately when necessary without having to wait for an Executive Board meeting. . . . In line with the National Conference the Los Angeles Committee will have a Chairman, Co-Chairman and Treasurer for Officers and also a list of prominent sponsors who will act as Board of Directors, honorary offices (sic) without organizational responsibilities."

* * * *

"Delphine Smith informed the Board of the change of offices to Room 311, same building." (A. G. Ex. 62.)

The conclusion is clear from this record that such things as the expenditure of respondent's funds, the pitch or line to be taken in its published material, the selection of day to day activities and of emphasis to be given in the campaigns, and the amount of effort to be applied in deportation and naturalisation cases, rest with and are controlled by Abner Green and the other Communist Party people holding the administrative positions in the organisation. The set-up is such that the organization can be run for Communist Party purposes as found supra.

Many of the facts previously found in considering the purposes of respondent are also indicative of and show activities in the carrying out of such purposes. It is pertinent, however, to examine in more detail the deportee defense activities.[1] In so doing we repeat again that it is not the fact of defending people which is relevant but the purposes for doing so. The emphasis in petitioner's evidence was upon Communists defended by respondent. On the other hand, Green testified and the record otherwise supports it, that respondent has defended a number of persons arrested for deportation on the basis of past or present membership in the Communist Party, but has also defended many non-Communists arrested for deportation on charges not involving any affiliation with the Communist Party.

Petitioner's witness Lautner testified that the defense of non-Party members was not incompatible with the operation of respondent as a Party defense organization, that "In fact, that would add to the prestige of the organization." (Tr. 1139.) Such defense activities and the approaches used by

1 "Defense" as we use it here includes both legal and propaganda. Legal defense includes providing attorneys and representation. Propaganda includes publicity and efforts for public support.

respondent (see supra) are consistent with the purpose of the Communist Party to have an ostensibly non-Party organization to assist Party members involved in deportation, and with the purpose of winning the good will and support of the entire foreign born segment of the population. In the context of this record, the fact that respondent has defended a number of non-Communists is not persuasive in showing independence from Communist Party control or operation for Party purposes. [1]

Respondent's actual work and activities in the legal and propaganda defense of Communist Party members has been substantial. Respondent has worked intensively for the repeal of all provisions of the laws of the United States covering the deportation of noncitizens on the basis of membership, past or present, in the Communist Party. In addition, respondent has worked in behalf of a large number of specific individuals who were involved in deportation proceedings on charges of past or present membership in the Communist Party. [2]

A so-called past Party membership case given considerable attention by respondent from the late 1940's up to the time of the hearing involved one Peter Harisiades. Abner Green testified that respondent's activities in behalf of Harisiades were not an attempt to seek public support or public sympathy for the Communist Party, that "it was an attempt to win public sympathy and support of the American people for the protection of the foreign born and for the position of the American Committee in respect to the deportation of noncitizens in cases of this character." (Tr. 5477.)

Yet, the literature issued by respondent in its nationwide campaign in the Harisiades case shows strong efforts to undermine public trust in the Department of Justice, to relate the deportation of Communists to attacks upon the constitutional rights of all Americans, and to press for a stop to the deportation of Communists. For example, respondent in the Harisiades

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1 While the merits of the deportation and naturalization cases handled by respondent are not issues in this proceeding, we have given appropriate regard to the fact that in a number of cases the courts held in favor of the defended alien.

2 Abner Green testified to the effect that less than ten percent of the total cases handled by respondent involved allegations of past or present Party membership. Other evidence of record indicates a much higher proportion, at least in excess of fifty percent. The actual number of people defended by respondent in the various categories is not necessary or important to the issues herein.

[fol. 67]

case as in other cases involving the deportation of Communists, accused the Department of Justice of "perverting the administration of the immigration and naturalisation laws" and "using them as a political weapon." (Resp. Ex. 174.) In addition to indirectly picturing the Communist Party as a mere political organization, respondent seemingly defended the Communist Party by references such as the following in its literature in the Harisiades case:

> "Peter Harisiades faces deportation to Greece on the ground that he is a former member of the Communist Party, which the Department of Justice alleges is an organization that advocates 'the overthrow by force and violence of the Government of the United States.' At the deportation hearing, Mr. Harisiades stated that neither he nor the Communist Party advocates, and that neither he nor the Communist Party ever have advocated, the 'overthrow by force and violence of the government of the United States.'" (Ibid.)

Respondent used the Harisiades case as a "test" case of the laws permitting deportation by reason of an alien joining the Communist Party after entry into the United States.[1] (A. G. Ex. 166.) According to respondent's literature, Harisiades joined the Communist Party in 1925, later held certain official positions in the Party, and ceased membership in 1939 only because the Communist Party dropped aliens from its rolls but without changing his social or political views. Petitioner's witness Lautner showed without contradiction that Harisiades was a member of the Nationality Groups Commission of the Communist Party at least as late as 1945.

We find that respondent's work and activities in the Harisiades case were consistent with the purposes of the organization as found supra.

With respect to the defense by respondent of individuals subject to deportation on the basis of current membership in the Communist Party, those defended have included a number of the top officers of the Party. Among them were the following members of the top governing committee of the Party, some of whom also held other offices as indicated: Alexander Bittelmen, Betty Gannett, Claudia Jones, Irving Potash, Jack Stachel, educational director, William Weiner, and John Williamson, trade union secretary. In connection with the defense of Party members against being

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1 Respondent's publication, The Lamp, issue for Aug.-Sept. 1952 (A. G. Ex. 218) reported that the Supreme Court of the United States upheld Harisiades' deportation and that in May of 1952 he was granted political asylum in Poland.

deported, we note that, significantly, in the case of foreign Communist representative Gerhardt Eisler, respondent supported him and the Party in efforts to allow him to leave the United States. (See supra.)

Among other Communists whom the record shows respondent has assisted in efforts to prevent deportation were: Party functionaries Beatrice Siskind Johnson; Ferdinand Smith, Dora Lipshitz, Toma Babin, Michael Obermaier, George Siskin, Alexander Stephens, alias Joe Goldberg and J. Peters, Israel Amter, Sam Mills, alias Sam or Sampson Milgrom, and Party members Morris Taft and James Lustig.

The work and activities of respondent in the field of the foreign born have been clearly consistent with the purposes found supra, and there have been no activities inconsistent therewith. A substantial part of respondent's resources, time and efforts have been devoted to campaigns directed at the elimination of all provisions of the laws under which alien members and officers of the Communist Party are deportable, to the legal and propaganda defense of such persons when they have been actually involved in deportation proceedings, and to instigating protests against Government officials when deportation charges have been brought against Communists. Respondent has consistently and strongly sought funds from the public with which to carry out its activities and has sought to win the good will of the foreign born. Obviously these activities, particularly in opposing the laws and working to prevent the deportation of Communists, constitute aid to the Communist Party.

Communist Party Support of Respondent

There remains for consideration the issue of the extent to which respondent's support has been derived from the Communist Party of the United States. (Section 13(f)(2) of the Act; Amended Petition, p. 7.) Our findings supra show a definite policy on the part of the Communist Party fully to support respondent.[1] The findings supra also show important implementations of this policy in providing leadership for respondent, organizing branches of respondent, and discussions by Party officials with the leaders of respondent on the operations of respondent.[2]

1 For instance, the statement of top Party leader William Z. Foster, which the Party published in Political Affairs, that it was the duty of all progressives to appreciate the need of the organization, to help raise funds for it, and to support its work.

2 For instance, the designation by the Party of Marion Kinney to organize the Northwest branch and her subsequent meetings with Party officials concerning her work in the branch; also, the selection of Abner Green to head respondent, and Green and Barron attending Party meetings where they "had the benefit of the discussions and deliberations of the Party on all policies." (Supra.)

[fol. 69]

Petitioner's witnesses who had been members and functionaries of the Communist Party and documentary evidence showed without specific denial or contradiction a consistent pattern of Party support of respondent and aid in respondent's activities. This included the fact that the P rty specifically instructed its members to contribute to respondent and to actively support respondent's affairs. It also included evidence: that the Party circulated material issued by respondent; that the Party sold tickets to the affairs of respondent; that Party officers and functionaries served as speakers at affairs given by respondent; that the Party made financial contributions to respondent; and, that respondent was given considerable favorable attention in the Party press. We consider this latter aspect in more detail below.

Respondent did not specifically deny or contradict the evidence that we find constituted aid or support given by the Communist Party. [1] The thrust of respondent's contentions was that the Party support was insignificant and does not tend to show that the Party controls respondent or that respondent was primarily operated for Party purposes. Abner Green testified that, generally speaking, respondent is financed by public voluntary contributions from individuals and organizations; that it also tries to sell literature; and, that it makes special appeals in connection with campaigns in specific cases. Green further testified that in accepting contributions respondent in no sense and at no time has in order to obtain them committed its program or its policies.

Among the evidence presented by petitioner of Party financial support was a check in the amount of $2000 given by the Communist Party to respondent. [2] Green explained the check as having been contributed by the Party to finance the legal expense of respondent in defending certain Party leaders who at the time had been arrested in deportation proceedings. Green also testified that respondent has received checks from labor unions whose members or leaders it was defending in deportation proceedings.

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1 We reject respondent's generalized contention, exception 34 to the recommended decision, that the instances of Communist Party aid and support are based upon testimony of unreliable witnesses.

2 Two other specific instances of financial aid given by the Communist Party to respondent were shown by petitioner's evidence: - a financial report of the Los Angeles Committee reflected that in 1950 the amount of $35 was received from the People's World and in October of 1950, Frank Carlson spoke as a Communist Party leader at a conference of the Los Angeles Committee and contributed $50 toward the reorganization of the Committee on behalf of the Communist Party,

[fol. 70]

On the matter of speakers, greetings, and publicity, Green's testimony, and documentary material as well, established that in the 1940's officials of the United States Government, including the Department of Justice, spoke at affairs of respondent and otherwise endorsed the work of the organization. Other prominent people have done likewise. An example of respondent's evidence on the support given it is a letter dated in April of 1948 addressed to respondent by the then Commissioner of Immigration and Naturalization asking the cooperation of respondent in the celebration of "I am an American Day" and complimentary of respondent. (Resp. Ex. 239, Tr. 6223-6226.) Another instance was a broadcast by the Office of War Information in 1945 to Australia and New Zealand in reference to the American Committee and the work of the American Committee. Another instance was that the Department of Justice, in 1941, contributed time for a nationwide radio broadcast on behalf of the American Commiftee for Protection of Foreign Born.

Petitioner argued that it is irrelevant and immaterial whether non-Communist groups or individuals have rendered support to respondent and given respondent favorable publicity. (See Petitioner's Reply to Respondent's Exceptions to Recommended Decision, p. 22.) Petitioner also contended that: "Certainly it is clear from the record that any non-Communist group which may have been duped into assisting Respondent would not have done so with knowledge of Respondent's true nature." (Ibid. See also, tr. 7162-7163 and 7173.) It is, of course, true, as argued by petitioner, that other organizations and their views and activities are not involved as issues in this proceeding, and that the ultimate issue herein is the relationship between respondent and the Communist Party. However, in determining whether there is any significance in the evidence of aid and support given to respondent by the Communist Party, we have taken into consideration the evidence presented by respondent, examples of which are set forth above. [1]

We find that in the context of the record as a whole there is significance in the cumulative evidence of aid and support given respondent by the Communist Party. This is particularly true as regards the Party press. Some instances have been set forth, supra, of the nature and type of statements concerning respondent that were published in the Party press. The interest of the Party press in respondent took the following forms in the evidence of record: (a) printed calls to and announcements of various and sundry functions

1 We have also considered respondent's contention, as made in exception 35, that the Communist Party discusses and shows an interest in and supports many non-Communist and anti-Communist organizations. In support, respondent pointed to the cross-examination of some of petitioner's witnesses, including Lautner, Hartle and Harper. We have reviewed the testimony involved and find that it does not establish the findings claimed by respondent.

[fol. 71]

of respondent; (b) reported fund appeals of respondent and urged donations thereto and reported names of honorary and other officers of respondent; (c) reported from time to time on a number of deportation and naturalization cases being handled by respondent, and advised readers how and where to obtain aid from respondent; (d) reported deportation drives fostered by respondent and various protests sponsored by respondent, and urged joining them; and (e) urged readers to contribute bail money to respondent.

The Party recognition of respondent in the Party press dates back to the early years of respondent's existence and continued to the time of the hearing. The publicized Party statements and references to respondent have been consistently kindly, friendly and fostering with no strains of discord or adverse criticism.[1] One aspect of the favorable publicity given respondent in the Party press has been to urge Party members and other readers to support the protests, the meetings, the fund drives and the programs of respondent. Another aspect has been the Party capitalizing on and using respondent's activities, such as the defense of Party leaders in deportation proceedings, to the advantage of the Party. This has been done by the Party publicizing the fact that the Party leaders were being defended by a seemingly non-Party organization, and by publicizing the statements made and the positions advanced by respondent as part of respondent's drives in behalf of the Party leaders.

An illustration of the evidence on the foregoing is an article in the Daily Worker for June 2, 1948, which stated that Jack Stachel "national educational director of the Communist Party," had been arrested on a deportation charge, and which publicized the position on the arrest taken by respondent as follows:

> "The arrest is nothing but an attempt to 'promote political persecution and to terrorize the American people,' said Abner Green, executive secretary of the American Committee for the Protection of Foreign Born of 23 W. 26 St., in a wire to Attorney General Tom Clark yesterday." (A. G. Ex. 124.)

Another example of the evidence of Party use of respondent's activities was furnished by an article in the Daily Worker for May 10, 1949, quoting a statement said to have been released by respondent. It was a statement of one Alexander Stevens, who according to the Daily Worker, had departed voluntarily for Hungary. Included in the statement, which the Party publicized as having been released by respondent was the following:

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1 This is itself significant in comparison with the attitude taken in the Party press as to legislation, institutions, and Governments considered inimical to the Party. (See, supra.)

[fol. 72]

"My membership in the American Communist Party has been my certificate of citizenship, and I have cherished it as the symbol of my acceptance into the American working class to which I have tried always to give loyal service.

"Because the United States monopolists in their drive to fascism and imperialist war have used me as a focus to attack other Communists in the United States, they have made it impossible for me to make any real contribution to the cause of the American workers." (A. G. Ex. 127.)

Lastly, by way of example, the Party, in an article in the Daily orker for May 4, 1952, publicized that a conference initiated by the Midwest ommittee for Protection of Foreign Born (branch of respondent) had attacked nd was organizing resistance against Supreme Court decisions that past embership in the Communist Party was a deportable offense. (A. G. Ex. 8.)

We find that throughout respondent's existence there has been a clear tent and purpose of the Communist Party to aid, promote, and support espondent, and we find further that the aid and support given by or emanating om the Party has been substantial.

CONCLUDING FINDINGS

On the basis of the subsidiary findings of fact hereinbefore made and ter careful consideration of all of the credible evidence in this proceeding, e Board determines that the following conclusions were established by the reponderance of the credible evidence.

The American Committee for Protection of Foreign Born is an organ- ation within the United States consisting of a national headquarters in New ork City and affiliated branches or chapters at various places throughout e country, named committees for protection of foreign born of particular calities. It holds itself out as an independent organization assisting all ncitizens and naturalized citizens with problems arising as a result of their reign birth, and protecting the liberties of all the American people from hat respondent asserts is a spreading American police state.

The circumstances of the control of respondent are clear on this cord. Despite representations to the contrary, ample evidence established at the organization has been and at the time of the hearing was under the ctive control of and operated by a small number of individuals most of whom

[fol. 73]

were shown to be members and representatives of the Communist Party of the United States. This appears not only from undenied evidence that the individuals were in fact Party members and from evidence that the chief leader among these individuals and at least one other were selected by the Communist Party to work in respondent, but from the nature and manner in which these individuals have operated respondent.

It has long been a policy of the Communist Party that the legal and propaganda defense of its members and officers be undertaken and carried out not by the Party itself but by a seemingly separate and independent organization. The Party also has long recognized and looked upon the foreign born as a good and likely source from which to gain adherents and sympathizers.

The weight of the credible evidence established that the purposes of respondent have in fact been to fight in many ways to prevent the deportation from the United States of members and officers of the Communist Party of the United States, and secondarily, to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party. Thus from the true purposes of respondent and its control and direction by Party members and representatives there is strong evidence that respondent exists primarily to do particular work of and for the Communist Party. In addition, there are other significant considerations.

A major program of respondent under which it has undertaken and carried out concerted and concentrated drives and campaigns has been for the repeal of all the provisions of the laws of the United States authorizing and permitting the denaturalization and the deportation of alien members and officers of the Communist Party. Moreover, respondent has actually defended in deportation proceedings a substantial number of Communist Party members, included among them being top leaders of the Party, and respondent has strongly solicited public contributions and support of and for these Communists.

Asserting that the immigration and naturalization laws and their administration are alien-baiting and part of a reactionary drive to fascism and war, respondent uses this as a basis for vehement attacks upon and criticism of the Government of the United States. These and other views and policies taken and advanced by respondent are similar to and consistent with the views and policies of the Communist Party and there is no instance of record where respondent has deviated from the positions of the Communist Party. Some of the matters on which respondent has advanced positions similar to those advanced by the Communist Party have involved domestic laws of the United States not reasonably related to immigration or naturalization, such as criticisms of the provisions of the National Labor Relations Act requiring

officers of labor unions to file non-Communist affidavits. Significantly, although purportedly interested in preventing deportations, when foreign Communist official Gerhardt Eisler was being detained on criminal and deportation charges in this country and the Communist Party was agitating for his release from detention and freedom to leave the country, respondent provided legal assistance in Eisler's behalf and carried out intensive campaigns for public support of its efforts to let Eisler leave.

Respondent has in a seemingly innocuous way, coupled defense and support of the Communist Party itself with propaganda concerning the immigration and naturalization laws and in individual deportation cases. In all of its activities respondent has received substantial financial and other support from the Communist Party and the Party has sought to capitalize on respondent's efforts in behalf of Party members and officials involved in deportation proceedings.

Respondent's purported interest in the foreign born, its outward espousal of democratic rights, and its professed interest in civil liberties were designed to make it attractive to many of those it sought to attract, and it has undoubtedly received contributions and other support from the public that it would not have received had the true circumstances and its true nature been known.

In sum, we conclude and find that respondent has been and is (i) substantially directed, dominated, or controlled by the Communist Party of the United States, a Communist-action organization as defined in section 3(3) of the Act, and (ii) primarily operated for the purpose of giving aid and support to such Communist-action organization.

It follows that respondent meets the definition of a Communist-front organization as defined in section 3(4) of the Act and that pursuant to section 13(g) (1) of the Act an order shall issue requiring respondent to register as such under section 7 of the Act.

An appropriate order is attached hereto.

By the Board.

Boyd McCullough Leary, Chairman
Francis A. Flaherty, Member
James K. Donegan, Member
Thomas J. Donegan, Member
, Vacancy

Washington, D. C.
June 27, 1960

[fol. 75]

APPENDIX

LIST OF WITNESSES

An asterisk (*) following the name indicates that the witness while in the Communist Party supplied information to the Federal Bureau of Investigation.

Petitioner's Witnesses

BERNICE BALDWIN,* a member of the Communist Party in 1943-1952.

EDWARD WILLIAM CARDIFF, assistant secretary in charge of branch office of Manufacturers Trust Company, New York City.

ROY M. COHEN, an attorney, formerly associated with the office of the United States Attorney for the Southern District of New York.

JAMES W. GLATIS,* a member of the Communist Party in 1949-1954.

CARL HACKER, a member of the Communist Party in 1919-1920 and 1927-1938.

REUBIN J. HARDIN,* a member of the Communist Party in 1931 and 1934-1937. Also from 1943 to about 1954.

CLARK M. HARPER,* a member of the Communist Party in 1943-1953, and a functionary in the Party's Northwest District.

BARBARA HARTLE, a member of the Communist Party in 1933 or 1934 - 1954, and a functionary in the Party's Northwest District.

JOHN LAUTNER, a member of the Communist Party in 1929-1950, and a functionary on the Party's national level.

ALFRO LAWSON, an investigator for the Immigration and Naturalization Service of the United States Department of Justice.

SARAH MALLOY, assistant vice president, Amalgamated Bank, New York.

[fol. 76]

MARY STALCUP MARKWARD,* a member of the Communist Party in 1943-1949, and a functionary in the Party's District of Columbia area.

MARION MILLER, a member of the Communist Party from 1952 to the time of testifying.

THOMAS J. NOLAN, an investigator for the Immigration and Naturalization Service of the United States Department of Justice.

HOWARD E. SCHEPELER, a supervisory investigator for the Immigration and Naturalization Service of the United States Department of Justice.

HERMAN THOMAS,* a member of the Communist Party in 1937-1939 and 1944-1954, and a functionary in the Party's eastern Pennsylvania area.

MAX WEINMAN, an investigator for the Immigration and Naturalization Service of the United States Department of Justice.

Respondent's Witnesses

ANTON JULIUS CARLSON, a sponsor of the American Committee for Protection of Foreign Born and chairman and co-chairman of the Midwest Committee for Protection of Foreign Born.

ABNER GREEN, executive secretary of the American Committee for Protection of Foreign Born.

CHARLES A. HILL, minister in the Baptist Church, sponsor and director of the American Committee for Protection of Foreign Born and co-chairman of the Michigan Committee for Protection of Foreign Born.

HARVEY K. McARTHUR, teacher at Hartford Theological Seminary and a sponsor of the American Committee for Protection of Foreign Born.

HORACE SPENCER MELDAHL, an attorney who has appeared in denaturalization and deportation proceedings.

ARTHUR W. MOULTON, retired Bishop in the Episcopal Church and sponsor and honorary chairman of the American Committee for Protection of Foreign Born.

[fol. 77]

SADIE SALTZMAN, wife of a person defended by respondent in deportation proceedings.

LOUISE PETTIBONE SMITH, professor, emeritus, of Biblical history honorary co-chairman of the American Committee for Protection of Foreign Born, and Honorary chairman of the New England Committee for Protection of Foreign Born.

PETER SOLDO, son of a person defended by Western Pennsylvania Committee for Protection of Foreign Born in deportation proceedings.

[fol. 78]

BEFORE THE
SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 109-53

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, PETITIONER,

v.

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, RESPONDENT.

ORDER OF THE BOARD—June 27, 1960

Having this day issued its Report in which, after a hearing upon a petition filed under subsection (a) of section 13 of the Subversive Activities Control Act of 1950, as amended, the Board finds that the American Committee for Protection of Foreign Born, respondent, is a Communist-front organization under the provisions of said Act, it is

ORDERED that the respondent herein, American Committee for Protection of Foreign Born, shall register as a Communist-front organization pursuant to the said Act.

By the Board.

, Chairman
, Member
, Member
, Member
, Vacancy

Washington, D. C.
June 27, 1960

[fol. 93] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15960

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petition for Review of Order of the
Subversive Activities Control Board

OPINION—Decided December 17, 1963

Mr. Joseph Forer for petitioner.

Mr. George B. Searls, Attorney, Department of Justice, with whom *Mr. Frank R. Hunter, Jr.,* General Counsel, Subversive Activities Control Board, *Mr. Kevin T. Maroney, Mrs. Lee B. Anderson,* and *Mr. Robert L. Keuch,* Attorneys, Department of Justice, and *Messrs. Charles F. Dirlam* and *Peter P. Hanagan,* Attorneys, Subversive Activities Control Board, were on the brief, for respondent.

Mr. Edward J. Ennis filed a brief on behalf of the American Civil Liberties Union, as *amicus curiae.*

[fol. 94] Before BAZELON, Chief Judge, PRETTYMAN, Senior Circuit Judge, and DANAHER, Circuit Judge.

PRETTYMAN, *Senior Circuit Judge*: Petitioner is before the court seeking to have set aside an order of the Subversive Activities Control Board issued June 27, 1960,

requiring it to register with the Attorney General as a Communist-front organization pursuant to the provisions of the Internal Security Act, Section 7.[1] On January 8, 1962, after a petition for review had been filed, this court remanded to the Board for purposes not now relevant. The Board issued its Report on Reconsideration on March 18, 1962. That report and the original report of the Board are now before us. Oral argument was heard in October of 1962.

The American Committee for Protection of Foreign Born was organized in 1932 or 1933 and has its main offices or headquarters in New York City. Its activities have centered around "the foreign born with considerable effort and attention given to the legal and propaganda defense of individuals involved in deportation and denaturalization cases." Many of those defended have been members of the Communist Party, and many have not been. The Board also found that the Communist Party has a "continuing policy" in this area. The Board said:

> "The aims and purposes of the Party have been: (a) to seek to prevent the denaturalization and deportation of officers and members of the Party, and (b) to win the goodwill of the foreign born and obtain from them adherents to and support for the Party and for Party programs. The record also shows that it was the policy of the Communist Party to carry out and advance these aims and purposes through and by an organization separate from and not a part of the Communist Party as such."

[fol. 95] The Board concluded that petitioner operates to serve this twofold purpose of the Communist Party and is substantially "directed, dominated, or controlled by the Communist Party of the United States, a Communist-action organization * * * and * * * primarily operated for the purpose of giving aid and support to such Communist-action organization."

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[1] 64 STAT. 987, 989, as amended, 50 U.S.C. § 782(4).

In reaching the result required by the evidence in this case, we need not attempt to resolve the constitutional questions advanced by petitioner. However, in determining whether there is a "preponderance" of evidence to support the Board's conclusions, it must be kept in mind that the Subversive Activities Control Act requires the Attorney General to make a particular showing as to Communist organizations before the requiring of registration can be constitutionally upheld. "'So long as no more is involved than exercise of the rights of free speech and free assembly, an [organization] is immune to such a restriction.' [Citing *Thomas* v. *Collins*, 323 U.S. 516, 540.] The present statute does not, of course, attach the registration requirement to the incident of speech, but to the incidents of foreign domination and of operation to advance the objectives of the world Communist movement—operation which, the Board has found here, includes extensive, long-continuing organizational, as well as 'speech,' activity."[2] "The statute is not applied like a spray to all persons who hold certain ideas or who may have become tainted by brushing against ideas or people."[3] [fol. 96] In an earlier opinion in this series of cases,[4] this court has said that, before it will sustain a finding that an organization is controlled and dominated by the Communist Party, the Government must present proof which is "specific, direct and timely." "[T]he Communist Party appears, and was declared by the Congress, [citing Sec. 2(15), Subversive Activities Control Act of 1950, 64 Stat. 989, 50 U.S.C. § 781(15)], to be a rigidly disciplined, well-organized, active organization. Its management is real, not happenstance, and its representation is definite, not

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[2] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 90 (1961).

[3] Washington Pension Union v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 398 (D.C. Cir. 1963).

[4] National Council of American-Soviet Friendship v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 375 (1963).

whimsical. Mere membership does not establish active management or responsible representative capacity."[5]

In recent months the Supreme Court itself has inquired into the adequacy of proof of Communist infiltration before it would sanction a legislative inquiry into the membership lists of the involved organization. "The strong associational interest in maintaining the privacy of membership lists of groups engaged in the constitutionally protected free trade in ideas and beliefs may not be substantially infringed upon such a slender showing as here made by the respondent. While, of course, all legitimate organizations are the beneficiaries of these protections, they are all the more essential here, where the challenged privacy is that of persons espousing beliefs already unpopular with their neighbors and the deterrent and 'chilling' effect on the free exercise of constitutionally enshrined rights of free speech, expression, and association is consequently the more immediate and substantial."[6]

The Supreme Court has also spoken on the right of an [fol. 97] organization and "its members and lawyers to associate for the purpose of assisting persons who seek legal redress for infringements of their constitutionally guaranteed and other rights." In this regard the Court said:

> "[L]itigation * * * is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. Just as it was true of the opponents of New Deal legislation during the 1930's, for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances."[7]

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[5] *Idem.*

[6] Gibson v. Florida Legislative Comm., 372 U.S. 539, 555-557 (1963).

[7] N.A.A.C.P. v. Button, 371 U.S. 415, 428-430 (1963).

With these principles in mind we turn to the case at bar. As we have noted, our petitioner devotes "considerable effort and attention * * * to the legal and propaganda defense of individuals involved in deportation and denaturalization cases." Indeed this appears to be its main interest and activity. It has a constitution. It has officers and honorary officers. It holds an "Annual Conference" each year, to which any and all members of the public are welcome and in which they may participate upon payment of the registration fee. It has an executive committee, elected by the annual conference, and it has full-time, paid administration officers. It has been in continuous operation since its organization. It seems clear, and the Board found, that the active directing force in the Committee was its executive secretary, Abner Green. Second to him was his assistant, Harriett Barron. The evidence was overwhelming that the board of directors and the annual conferences were perfunctory, [fol. 98] as such boards and conventions so frequently are in unincorporated associations, and the real direction and control were in the hands of the chief executive officer. It was clearly established that Green and Barron were members of the Communist Party.

We have discussed at length the meanings of various provisions of the Internal Security Act of 1950.[8] We will not repeat that discussion here.

We inquire first into the management, or control, interrelationship of the Committee and the Communist Party. This is clause (A) of the statutory definition of a Communist front.[9]

It is not claimed, and the Board did not find, that Green or Barron were active in the management or control of

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[8] Labor Youth League v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 364 (1963); National Council of American-Soviet Friendship v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 375 (1963); Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board, —— U.S. App. D.C. ——, —— F.2d —— (1963).

[9] Sec. 3(4)(A), 64 STAT. 989, 50 U.S.C. § 782(4)(A).

the Party. But the first "criterion" in the statute[10] includes also the extent to which the active director of the named organization is a representative of the Party. A representative, obviously, need not be a participant in the management of his principal.

There was direct and specific testimony that Green was put at the head of the Committee by authority of the Party. The witness Lautner testified that he and one Landy, both of the Nationality Groups Commission of the Party, were delegated by the Central Committee of the [fol. 99] Party to decide upon the leadership of the Committee for Protection of Foreign Born. They named Green, "and that decision was carried out."

Green on the witness stand flatly contradicted Lautner, but this created a problem of credibility, which was for the trier of the facts who saw and heard both witnesses. The Act provides that findings shall be supported by a preponderance of the evidence, but evidence which is not believed by the trier of the facts has no weight in that scale. Of course the fact-finder cannot be arbitrary. But in the case before us that complication does not appear to be a real one on this point, despite the claims of the Committee.

Green said that he was made head of the organization through election by an annual convention. But convention election of officers already actually selected by one person or a small group of people is a commonplace. The election by the convention does not contradict Lautner's account.

There was direct and specific evidence that Green and Barron attended Party meetings, were advised of Party policies, and carried out those policies in the work of the Committee. In its published account (Political Affairs, Feb., 1951) of its 15th National Convention, the Party recited the advice of W. Z. Foster that the Party not become a "defense organization" but should carry on defense work through "[a] separate permanent non-partisan organization devoted exclusively to this purpose". In the next section of that same publication, the Civil Rights

[10] Sec. 13(f)(1), 64 STAT. 1000, 50 U.S.C. § 792(f)(1).

Congress, hailed as the logical inheritor of the fighting spirit, record and experiences of the I.L.D., and our petitioner Committee, "led by the devoted and indefatigable Abner Green," were coupled for praise, and "all progressives" were called upon to support their work. The witness Lautner, who, as we have said, was a minor Party official, testified that he was elected to the credentials [fol. 100] committee of a conference of the Committee and was put on the executive committee of the Committee.

The evidence is direct and plentiful that the Party took an active part in the organizing of the regional Committees for Protection of Foreign Born, of which there were several. The evidence is ample that the officers of the regional Committees were members of the Party, sometimes minor officers in the Party, such as district directors, and that other such Party officials participated not only in the organization of these Committees but in their programs. It is clear that Green participated in such activities. There is much discussion in this record, and here, as to whether these local groups were autonomous organizations or were integral parts of our petitioner, the national Committee. We think the point is unimportant. It is abundantly clear that, whatever the technicalities may be as to the nature of these unincorporated associations, they were intermeshed with the national group, not only in policies but in operation. The issues of *The Lamp*, the Committee publication, on file here as exhibits, amply prove this situation.

In determining Green's status as a Party representative *vel non* the Board, under the statutory direction, took into consideration the extent to which the Committee supported the Party, was supported by it, and abided its policies; *i.e.*, the other three "criteria" in Section 13(f).

Turning then to these other "criteria", evidence of support of the Committee by the Party, and the identity of the positions and policies of the Party and the Committee, is ample to support the conclusions of the Board on those features. The record is replete with instances in those respects, and they seem to have been continuous from the early 1940's to the time of the hearing before

the Board in 1954. We have no difficulty with these features of the findings.

Whether the Committee was operated primarily to aid [fol. 101] and support the Party, and the extent to which its resources and personnel were used to further or promote the objectives of the Party, which are clause (B) of the statutory definition and the third of the "criteria", pose questions. The Supreme Court has held that "primarily" does not necessarily mean principally; it may mean merely substantially.[11]

The Committee for Protection of Foreign Born (our petitioner) undoubtedly devoted the major portion of its efforts to contesting the deportation of aliens and promoting their naturalization. It furnished counsel and material in court cases in that area, issued statements, made pleas, and in every possible way battled in this behalf. It also fought the Internal Security Act and other statutes and proposed legislation, but the major thrusts of its offensive seem to have been the naturalization and deportation features of those measures. The Committee fought in behalf of many members of the Communist Party. There is some dispute as to the proportion of the persons it aided who were Party members. But there is no dispute as to the fact that it enlisted in behalf of many non-Communists.

Obviously the naturalization of its members and the prevention of their deportation were direct aims and purposes of the Communist Party. And a more subtle factor is present. The foreign-born constitute one of the likeliest reservoirs of potential disciples for Communism in this country. Many of these people are less fearful of foreign influence or less attuned to the basic concepts of this nation than are their second and subsequent generations. The Party made an official declaration along these lines early in the 1930's. To establish itself as the champion of the foreign-born and to imprint such an image of itself on the public mind would obviously be of major benefit [fol. 102] to the Party. But the protection of the rights of

[11] Board of Governors v. Agnew, 329 U.S. 441, 446 (1947).

the foreign-born is not only a laudable objective; it is a basic one in this country. This is true not only theoretically and philosophically but also historically and factually. What, then, of an organization which vigorously devotes itself to the protection of the rights of all and any foreign-born who seek its help? Is it to be held a Communist front because the ends sought are Communist aims? Of course not. But, if in espousing causes which are Communist objectives an organization does so because of Communist control and direction, is it then a Communist front? To reach an answer to this question we think we must trace the pertinent considerations from their base. The Congress found and declared as a fact that the Communist movement is a world-wide revolutionary movement whose purpose it is, by any means deemed necessary, to establish a Communist totalitarian dictatorship throughout the world. The Supreme Court has told us that we must accept as established facts these findings, and others which we shall recite, of the Congress.[12] The Congress further found that the Communist dictatorship, vested in a foreign country, operates by causing the establishment in various countries of action organizations which are controlled by that foreign power. It has been established by a process of administrative and judicial inquiry in this country that the Communist Party of the United States is such an action organization.[13] The Congress further found as a fact that these action organizations operate to a substantial extent through "fronts", which in most instances are created or used in such manner as [fol. 103] to conceal their true character and purposes, and that a result of this method is to obtain support from persons who would not extend such support if they knew the true purposes of, and the actual nature of, the control and influence exerted upon such "fronts". The Congress also found as a fact that "One device for infiltration by Com-

[12] Galvan v. Press, 347 U.S. 522, 529 (1954); Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1 (1961).

[13] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1 (1961).

munists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society."[14] Upon the basis of these Congressional findings, which, as we have said, we must accept, we evaluate the record before us.

In the foregoing context it is indubitably clear that any laudable, praiseworthy activity which is identified in the public mind with the Communist Party or with Communism, or is so identified in the minds of those being aided by the effort, or is identified as being within the community of policies advocated by the Party, is a benefit to and naturally an objective of the Party. The identification of itself with laudable causes would, of course, be a benefit to the Party, as it is to any organization. The identity of its prominent members with such causes is also a worthwhile project for an organization seeking power among the public. More subtle and less effective, but perhaps the only route to public acceptance available to a clandestine operator is to create a picture of a community of interest between its own causes and interests which bear public acclaim. This is indeed a subtle business, but if effectuated it would be a real and substantial aid and support to the Party. This is one of the theses of the statute. The Congress declared that the Communist movement attracts strength to itself by operating behind a facade of good deeds.

The statute does not seek the registration of an organization devoted to the protection of the rights of the [fol. 104] foreign-born. It seeks the registration of any organization the purpose of which, under control of the Party, by any activity, laudable or otherwise, is to strengthen the power of the Communist Party in this country.

The American Committee, by constant utterances and by its public attitude on issues apart from naturalization and deportation, vigorously identified its cause with causes of the Communist Party. One cannot read its declarations without gaining an impression that the cause of Communists threatened with deportation is the cause of all people

[14] 64 STAT. 989 (1950), 50 U.S.C. § 781 (1).

so threatened and that Communist leaders are leading the effort on behalf of all.

The official organ of the Committee was *The Lamp*, published monthly in New York. It reflects the activities of the organization. Copies of issues from March, 1944, to January, 1954, are in the record. This paper carried current accounts of developments in cases and events in which the Committee was interested. It followed the *Harisiades* case and the *Terminal Island Four* case throughout their histories. From time to time it announced new arrests in deportation proceedings—sometimes twenty-five at a time, or an alleged total of some three hundred. It carried small news notes on the progress of deportation cases, the grant or denial of bail, and the results of petitions for habeas corpus and appeals to the courts. It announced conferences and committee meetings, the formation of special defense committees in particular cases, and the publication of booklets on special cases. The meetings of the various area Committees for Protection of Foreign Born were announced in some detail. It appealed for funds and carried strong editorials condemning what it termed "The Deportation Drive". In short, *The Lamp* was a vigorous, well-prepared, constant advocate of the rights of the foreign-born. Some of its extended campaigns were for repeal of the Walter-McCarran Act (its name for the Internal [fol. 105] Security Act of 1950), support of the Lehman-Celler bill, the right to bail in deportation cases, opposition of denaturalization, and the status and problems of Mexican-Americans. From time to time it announced it was currently engaged in as many as 325 deportation cases and more than 40 denaturalization cases. Its total income ran as high as $43,500 and its expenses about that much. Abner Green served a federal prison sentence for refusing to reveal the names of contributors. It carried news about the activities of organizations of nationalities—Hellenic American Brotherhood, for example.

Through all these activities runs a prominent thread of Communist interest. The Committee took vigorous positions in respect to the Gerhardt Eisler affair. Eisler was foreign-born, to be sure, but this was not a natural-

ization or deportation matter; quite the contrary, in fact. The controversy which swirled about Eisler concerned his membership in the Communist Party and his refusal to testify before the House Committee.[15] The provisions of the Internal Security Act which were the targets of the Committee's attacks were those which required the deportation of aliens who were or had been members of the Communist Party. The Committee maintained that these provisions were premised on political opinion and threatened the freedom of all American people to their political opinions. This, of course, is Communist doctrine, but so far as this Government is concerned the point was put at rest by the Congressional findings to which we have referred. The deportation of Peter Harisiades, which the Committee called a test case and opposed with all the resources at its command, was on the ground that he was a [fol. 106] member of the Communist Party.[16] The Internal Security Act is directed also at Fascists and all sorts of totalitarians. But we do not find in this record evidence that the Committee fought in behalf of Fascist aliens. Indeed it expressed a hearty antagonism to adherents of that thesis. The Committee campaigned for repeal of the Smith Act of 1940[17] and in defense of those indicted under it. When, in March of 1952, the Supreme Court ruled on a group of cases involving problems of members of the Communist Party under various sections of the so-called McCarran Act, *The Lamp* said: "In a series of three opinions, the U S. Supreme Court has made far-reaching decisions destroying many of the democratic rights accorded non-citizens and jeopardizing, thereby, the liberties of all Americans, native as well as foreign born. • • • In a statement, the ACPFB [this Committee] declared that the U. S. Supreme Court had deserted its

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[15] Eisler v. United States, 83 U.S. App. D.C. 315, 170 F.2d 273 (D.C. Cir. 1948), *cert. dismissed*, 338 U.S. 883 (1949); 84 U.S. App. D.C. 404, 176 F.2d 21 (D.C. Cir.), *cert. denied*, 337 U.S. 958 (1949).

[16] Harisiades v. Shaughnessy, 342 U.S. 580 (1952).

[17] 54 STAT. 670.

duty to protect the Bill of Rights • • • .” Of the same events *The Worker* (issue of March 16, 1952), an official organ of the Communist Party said:

> “ANOTHER MONDAY—Supreme Court decision day—has passed and another gaping hole has been torn in the Bill of Rights by the war-thirsty Court majority.
>
> “In trampling upon the rights of foreign born non-citizens, the court has destroyed the constitutional rights of foreign-born citizens as well, and threatened the rights of the native born.”

Testimony of Immigration officers was that the “bulk” of the three hundred deportation cases which the Committee at one time said it was defending involved allegations that the persons involved were members of the Communist Party. The terms used by *The Lamp*, the epithets [fol. 107] applied to Government officials and their activities, are in tune with the utterances and attitudes of the Communist Party, expressed by its leaders and its publications.

Then, then, the total picture in this record, viewed in the light of the statutory definition and the supporting “criteria”, is of Abner Green as the directing force in the petitioner Committee, his selection for the post by authority of the Central Committee of the Communist Party, his attendance upon policy meetings of the Party, the vigorous support of him and the petitioner Committee by the Party, the identity of the objectives of the Committee and objectives of the Party, the similarity of Committee policies and Party policies in related areas, the notable Party overtones of Committee expression, and the direct involvement of Party members in a great proportion of the Committee's direct efforts. A Communist front is not declared by the Congress to be an action group; it is declared to be a facade behind which the Party, through designated representatives and control, works to strengthen itself in this country. When all the foregoing considerations are put together it seems to us that the conclusion of the Board that the Committee,

our petitioner here, was a Communist front within the terms of the statute was well founded. In the *Communist Party* case the Supreme Court told us:

> "The existence of direction, domination, or control in each instance is an issue of particular fact. The question whether in the case of a given organization such a compulsion or impulsion arises from the complex of ties which link it to a foreign government or organization that it will, because of those ties alone, adhere in its conduct to decisions made for it abroad, is one which Congress has committed, in the first instance, to an expert trier of fact. * * * Our decision in *Rochester Telephone Corp.* v. *United States*, 307 U.S. 125, is especially apposite here. * * * [W]e said: 'Investing the Commission with the duty of ascertaining "control" of one company by another, Congress [fol. 108] did not imply artificial tests of control. This is an issue of fact to be determined by the special circumstances of each case. So long as there is warrant in the record for the judgment of the expert body it must stand.'" [18]

Petitioner raises other points of law—the decision that the Communist Party is a Communist-action organization is not binding in this proceeding, and the registration provisions of the Internal Security Act are unconstitutional. We have ruled upon those points in other cases, to which we have referred, *supra*. Relying upon them we reject our present petitioner's contentions in those regards.

The order of the Board in this case will be

Affirmed.

BAZELON, *Chief Judge*, dissenting: The Subversive Activities Control Act[1] aims to prevent a world-wide Communist conspiracy from accomplishing its purpose in the

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[18] *Supra* note 13, at 40-41.

[1] 64 Stat. 987 (1950), 50 U.S.C. §§ 781 *et seq.* (1958).

United States. §2(15). Section 3(3) defines "Communist-action organization" as an organization which "(i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement . . . ." Those objectives are "the overthrow of existing government by any means necessary and the establishment in its place of a Communist totalitarian dictatorship." *Communist Party* [fol. 109] v. *Subversive Activities Control Board*, 367 U.S. 1, 89 (1961).

Section 3(4) of the Act defines "Communist-front organization" as an organization that "(A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement . . . ." The Communist Party is a Communist-action organization. But I think the Board has not shown that the American Committee for Protection of Foreign Born "(B) is primarily operated for the purpose of giving aid and support" to the Communist Party.[2] "The findings of the Board as to the facts, if supported by the preponderance of the evidence, [are] conclusive." §14(a). But what the Act means is a question of law for the court.

Congress might have made Communist control the sole test of a "Communist-front organization." But Congress chose to include in the definition a purpose element as well as a control element. Also, Congress chose not to out-

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[2] Although Congress juxtaposed the word "substantially" in § 3(4)(A) with "primarily" in § 3(4)(B), the majority nonetheless says that "primarily" means "substantially." Majority Opinion p. 9. To support this construction of the Subversive Activities Control Act, reference is made to the Banking Act of 1933 where, in a widely different context, the word "primarily" appears alone. I think the word "primarily" in § 3(4)(B) must be given its ordinary dictionary meaning of "principally" or "chiefly."

I have not considered the Board's finding that the American Committee "(A) is substantially directed, dominated, or controlled" by the Communist Party.

law the Communist Party or prohibit all of its activities. Besides the objectives of overthrowing the government and establishing a dictatorship, the Party has innocent [fol. 110] objectives and innocent activities. These are known to include, *e.g.*, promoting public school integration. They have been shown to include contesting the deportation of aliens and promoting their naturalization. Congress did not say, and I think Congress did not mean, that a "purpose of giving aid" to a Communist-action organization in promoting an innocent objective makes an organization which it controls a Communist-front organization. I think the word "purpose" in §3(4) should be read in connection with the word "objectives" in §3(3). This context indicates that "purpose" is intended and should be understood to be limited to the purpose of aiding a Communist-action organization to advance the objectives of the world Communist movement.

The way in which the Act deals with Communist-front organizations confirms this understanding. The Act does not stop with requiring these organizations to register and furnish information. Most of the severe penalties prescribed in §§5(a) and 6(a) of the Act apply not only to members of Communist-action organizations but to members of Communist-front organizations also.[3] These sections of the Act make it "unlawful" for members of either sort of organization to hold any non-elective office or employment under the United States, or to be employed by any labor organization, or to use a passport, or even to apply for a passport. The validity of these severe penalties is not now before us. But in my opinion their severity shows that Congress had no intention of inflicting them on otherwise innocent people merely because of membership in otherwise innocent organizations that the Communist Party uses to advance an innocent aim.

[fol. 111] Moreover a limited interpretation of the term Communist front is necessary if serious constitutional

[3] Section 5(a)(1)(D) prohibits employment in defense facilities of members of Communist-action organizations only. See also §§ 6(b), 7(d)(4), and 8.

questions are to be avoided. The *Communist Party* case determines that constitutional rights including freedom of speech are not violated by enforcing the registration and information requirements of the Act against organizations that are primarily operated for the purpose of overthrowing the government and establishing a totalitarian dictatorship. 367 U.S. at 104-05. But it is quite doubtful that these same requirements may constitutionally be enforced against an organization that is not shown to have the same or similar purposes. It is even more doubtful that the severe penalties of §§5(a) and 6(a) may constitutionally be inflicted on the members of such an organization. Although the last question is not now before us, it is bound to arise if "Communist-front organization" is finally given the broad interpretation which this court now gives it.

Activities protected by the first amendment cannot be restrained because of association with an organization some of whose activities are not so protected. In *De-Jonge* v. *Oregon*, 299 U.S. 353 (1937), the Supreme Court held that although the Communist Party was engaged in unlawful activities, punishing a member for helping the Party conduct a meeting that had only lawful purposes violated his constitutional right of free speech. The Court said:

> The holding of meetings for peaceable political action cannot be proscribed. . . . The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. [299 U.S. at 365.]

In *Scales* v. *United States*, 367 U.S. 203 (1961), the Court [fol. 112] sustained the constitutionality of a broad clause of the Smith Act directed against members of the Communist Party by interpreting the clause as intended to apply only to those members who intend to engage in or further the Party's sinister activities. The Court said: "Thus the

member for whom the organization is a vehicle for the advancement of legitimate aims and policies does not fall within the ban of the statute . . . ." 367 U.S. at 229.[4]

This court does not directly express a conclusion with regard to the Committee's purpose. It does say that the Board's conclusion that the Committee "was a Communist front within the terms of the statute was well founded." Majority Opinion p. 15. But the court's opinion is devoted almost entirely to the subject of control by the Communist Party. The otherwise lawful purposes of an organization do not become unlawful simply because it is controlled by an organization that has the same lawful purposes together with other purposes that are unlawful. Neither the Board nor the court says the preponderance of the evidence supports a conclusion that the Committee is primarily operated for the purpose of aiding the Communist [fol. 113] Party to advance the world Communist movement's objectives of overthrowing the government and establishing a totalitarian dictatorship. It seems to me clear that the preponderance of the evidence does not support such a conclusion. I would therefore set aside the Board's order.

I think the government failed to prove by a preponderance of the evidence that the Committee is primarily operated for the purpose of giving aid and support to the Communist Party in advancing *any* objective, even an in-

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[4] Cases such as *American Communications Ass'n* v. *Douds*, 339 U.S. 382 (1950); *Killian* v. *United States*, 368 U.S. 231 (1961); *Galvan* v. *Press*, 347 U.S. 522 (1954); *Rowoldt* v. *Perfetto*, 355 U.S. 115 (1957); *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469 (1963), are not to the contrary. The latest expression of Supreme Court doctrine makes plain that certain civil sanctions may be imposed based on evidence of a "meaningful association" with the Communist Party characterized by awareness of its "distinct and active political nature"; but such sanctions may not rest on evidence of an "association" with the Party—much less with one of its alleged front organizations—characterized by a belief that it is "a group solely trying to remedy unsatisfactory social or economic conditions, carry out trade union objectives, eliminate racial discrimination, combat unemployment or alleviate distress and poverty." *Gastelum-Quinones* v. *Kennedy*, *supra* at 473-74.

nocent one.[5] As the court points out, both the American Committee and the Communist Party attacked and attempted to change our government's policy toward the foreign born, and defended individuals, many of them Communists, who were affected by the policy. But as the court also says, the Committee "enlisted in behalf of many non-Communists." Majority Opinion p. 9. I think the evidence does not show that the Committee was primarily operated for the purpose of giving aid to the Party in advancing any objective, rather than for the purpose of advancing the Committee's own objectives which the Party shared. To treat the Party's control of the Committee, and the overlapping of their memberships and objectives, as proving that the Committee was primarily operated for the purpose of aiding the Party would read the element of purpose out of the Act and make it unnecessary for the government to prove anything more than control.[6]

[fol. 114] Our first opinion in *Communist Party* v. *Subversive Activities Control Board*, 96 U.S.App.D.C. 66, 109-10, 223 F.2d 531, 574-75 (1954), states that the Board had found secret practices of the Party to have been engaged in for the purpose of concealing the Party's true nature and promoting its objectives, whereas the Party contended its purpose in using the secret practices had been to protect Party members from oppression. We said:

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[5] The Board concluded that the Committee operates to serve a two-fold purpose of the Party: "(a) to seek to prevent the denaturalization and deportation of officers and members of the Party, and (b) to win the goodwill of the foreign born and obtain from them adherents to and support for the Party and for Party programs." Report and Order of the Board at 21 (June 27, 1960).

[6] Although conduct may sometimes show purpose, I think the Committee's ambiguous conduct in this case does not support an inference of any purpose other than protection of the foreign born. In the *Communist Party* case, on the other hand, the proof included "long-continued, totally unwavering identity of policy lines" between the Party and the Soviet Union, including identical positions on "forty-five major international issues during thirty years." 367 U.S. at 59, 61.

> This question, whether the secret practices of the Party are for the purpose of protecting the liberties of the members or are for the purpose of promoting the objectives of the Party, is a nebulous one. The two purposes may well overlap. In so far as protection of its members from public identification as Communists also promotes the objectives of the Party, both purposes could exist together. In a doubtful situation such as that on this point, we strike the finding as to purpose. [96 U.S.App.D.C. at 110, 223 F.2d at 575.]

I think we should strike the finding as to purpose in the present case. In the former case, the finding as to purpose was a subsidiary one and we affirmed the Board's order without it. In the present case, the American Committee's purpose is a crucial question. But this should not lead us to abandon the principle we formerly adopted.

When the control and the purpose that show an organization to be a Communist front are both established, its lawful activities do not insulate the organization and its members from the sanctions directed against fronts. But [fol. 115] lawful activities cannot, in my opinion, make an organization a front.[7] A Communist-front organization is like a man with a false beard. The Subversive Activities Control Act directs us to remove the beard but not without proof that it is false.

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[7] This court illustrates what seems to me its misunderstanding of the law by characterizing as "of course . . . Communist doctrine" the American Committee's position that laws requiring deportation of present or former Communist aliens "were premised on political opinion and threatened the freedom of all American people to their political opinions." Majority Opinion p. 13. This view of the deportation provisions is held by many loyal Americans. See also the Board's similar argument:

> "Even Abner Green's testimony that in defending Eisler in the deportation proceedings [the American Committee] was supporting the Bill of Rights, was consistent with the position of the Communist Party that 'To advocate action against Communists is to destroy the Bill of Rights.'" Report and Order of the Board at 29.

[fol. 116] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,960—September Term, 1963.

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN-BORN,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petition for Review of Order of the Subversive Activities Control Board.

Before: Bazelon, Chief Judge, Prettyman, Senior Circuit Judge, and Danaher, Circuit Judge.

JUDGMENT—December 17, 1963

This case came on to be heard on the record from the Subversive Activities Control Board, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the order of the Subversive Activities Control Board on review in this case is affirmed.

Per Senior Circuit Judge Prettyman.

Dated: Dec. 17 1963

Separate dissenting opinion by Chief Judge Bazelon.

[fol. 119] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 610]

BEFORE THE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 109-53

HERBERT BROWNELL, JR., Attorney General of the United States, Petitioner,

Petitioner,

vs.

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, Respondent.

Transcript of Hearing—June 24, 1955

Room 111, Lafayette Building,
811 Vermont Avenue, N. W.,
Washington, D. C.

The above-entitled matter came on for further hearing, pursuant to recess, at 10:00 o'clock a.m.

Before:

EDWARD M. MORRISSEY, *Examiner.*

APPEARANCES:

F. KIRK MADDRIX and MALCOLM F. KNIGHT, in behalf of the Petitioner.

JOSEPH FORER, 711 — 14th Street, N. W., Washington, D. C., and

ABNER GREEN, 23 West 26th Street, New York City, New York, in behalf of the Respondent.

[fol. 721] JAMES W. GLATIS was called as a witness on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Knight:

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[fol. 743] Q. In connection with that work in Massachusetts for front organizations of the Communist Party, did you at any time learn of an organization called the American Committee for Protection of Foreign Born?

A. Yes, sir, I did.

Q. When was that, sir, to the best of your recollection?

[fol. 744] A. I first heard of the American Committee for Protection of Foreign Born in 1950 and subsequently to that time.

Q. Would you describe the circumstances under which you first learned of its existence?

A. I attended a meeting which was described as the founding meeting of the New England Committee for the Protection of Foreign Born, which was held in the hall located on, I would say, the 400 block of Tremont Street in Boston, Massachusetts.

Q. Mr. Glatis, did you attend this founding meeting of the New England Committee for Protection of Foreign Born?

A. Yes, sir, I did.

• • • • • • •

[fol. 745] Q. Who was present, Mr. Glatis?

A. Present at this founding meeting of the New England Committee for Protection of Foreign Born was Dave Rosenberg, Secretary of the Communist Party, District No. 1; Nat or Nathaniel Mills; Ruth Hillsgrove—

Mr. Forer: May we have the spelling of that?

The Witness: H-i-l-l-s-g-r-o-v-e.

Louis Marks, M-a-r-k-s; Abner Green.

By Mr. Knight:

Q. What was the last name, sir?

A. Abner Green.

Q. By the way, do you see Mr. Abner Green present in the hearing room, Mr. Glatis?

A. Yes, sir.

Q. Could you identify him for us, point him out for us, please?

A. The gentleman seated next to Mr. Forer, on his left.

• • • • • • •

[fol. 751] Q. Mr. Glatis, as a result of this meeting at which Abner Green was in attendance, Dave Rosenberg and others whom you have named, was there actually established an organization known as the New England Com-
[fol. 752] mittee for Protection of Foreign Born?

• • • • • • •

The Witness: Yes, sir. The principal speaker was Abner Green, who described at some length the activity of the American Committee for Protection of Foreign Born, outlined some of the cases that were being handled by the American Committee for Protection of Foreign Born, stressed the need for a New England Committee for Protection of Foreign Born, also stressed the necessity for funds to be collected and the organization that was necessary to set up such a New England Committee for Protection of Foreign Born.

Abner Green also stated at the time that the American Committee for Protection of Foreign Born would work together with the New England Committee for Protection of Foreign Born and assist them in every manner in helping the New England committee to work in the same manner as the American Committee for the naturalized American citizens, as he stated, who were being deprived of their civil liberties.

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[fol. 976] June 29, 1955

JOHN LAUTNER was called as a witness on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Maddrix:

Q. Please state your full name.
A. My name is John Lautner, L-a-u-t-n-e-r.
Q. At the present time you are residing here in Washington, D. C.?
A. I am not giving my address. I have a mailing address, and that is the Department of Justice.
Q. I say, you are, though, in Washington, D. C.
A. At this moment, yes.
Q. Where were you born and when, Mr. Lautner?
A. I was born in Hungary on the 1st of January in 1902.

Mr. Morrissey: Can you hear?
[fol. 977] Mr. Forer: I am having great difficulty hearing.
Mr. Morrissey: Will you speak louder, Mr. Lautner.
Mr. Forer: May we have that last answer?

(Whereupon, the last answer was read by the reporter.)

By Mr. Maddrix:

Q. When did you first come to the United States?
A. When I was about 16 months old—
Q. How long did you stay?
A. —in 1903. I stayed until the age of six, when I went back with my parents to Hungary, and I came back in 1920.

Mr. Forer: Excuse me a moment. Was that late date 1920?
Mr. Maddrix: 1920.

By Mr. Maddrix:

Q. Will you tell us a little bit about your formal education?

A. I have public school, high school, and a year and a half in teachers college.

Q. Where were your studies pursued?

A. In Hungary.

Q. All in Hungary?

A. Yes.

Q. Are you at the present time a citizen of the United States?

[fol. 978] A. Yes.

Q. When were you made a citizen?

A. In 1926.

Q. Where was that?

A. In Youngstown, Ohio, in the Common Pleas Court of Judge Lyons.

Q. Were you ever a member of the Communist Party?

A. Yes.

Q. Where did you join?

A. In New York City in 1929.

Q. How long did you remain in the Party?

A. With the exception of the time I was in the Army during the war, up to the 17th of January 1950.

Q. What was the first Communist Party unit to which you were assigned, if you recall?

A. It was known as the Yorkville Unit, the Harlem Section of the Communist Party, New York City.

Q. Did you hold any official positions in the Communist Party during the many years in which you were a member of that organization?

A. Yes.

Q. I want you, if you will, Mr. Lautner, to detail in chronological order, giving the years, the various positions which you held in the Communist Party.

A. When I joined, I was a member for a while. In 1930, [fol. 979] in the spring, I was assigned to a Party training school in New York.

After graduation from that school around the end of June in 1930, I was assigned to Detroit, Michigan, as the district secretary of the Hungarian National Bureau of the Communist Party. I functioned in that capacity up until the spring of 1931.

In addition to that, for about 7 or 8 months I was also secretary of the District Control Commission of the Communist Party in Michigan.

Q. Will you hesitate there to describe what this District Control Commission was?

A. The District Control Commission was the disciplinary arm of the Communist Party. It was to develop vigilance in the ranks of the Communist Party against infiltration of anti-Party elements of all sorts. It was to hear disciplinary cases and make decisions. It was to safeguard the Marxist-Leninist purity of the Communist Party in that district.

Q. That brings us up to 1931, does it?

A. No. That brings us up to the spring of 1931. I was in Canada for about 11 months—

Mr. Forer: Excuse me. How many months was that?

The Witness: About 11 months.

—as Secretary of the Hungarian National Bureau there, and I was editing a weekly Communist paper there.

[fol. 980] From there I was reassigned—

By Mr. Maddrix:

Q. Will you let me interrupt here. You were in Canada?

A. Yes.

Q. Do you mean that this position as Secretary of the Hungarian National Bureau was a Canadian bureau of the Communist Party?

A. It was a bureau of the Canadian Communist Party, that is correct.

Q. May I ask you how you were assigned to Canada?

A. By the Org Commission, the Organization Commission of the C.P.U.S.A., the Communist Party of the United States.

Q. Continue, please.

A. In the early spring of 1932, I was reassigned to Cleveland, Ohio, as District Secretary of the Hungarian National Bureau in the Ohio District of the Communist Party, and I was one of the editors of the Hungarian Communist daily paper in Cleveland, Ohio.

Q. Who assigned you to Cleveland, Ohio?

A. The Org Bureau of the Communist Party, on the recommendation of the National Hungarian Bureau of the Communist Party.

Q. Will you explain for the Chairman here what the Org Bureau was?

A. The Org Bureau is a subcommittee of the Central [fol. 981] Committee of the Communist Party that plans all the campaigns and translates all the decisions of the Central Committee into activities in the Communist Party, and gives direction and guidance in the name of the Central Committee for all these activities in the Communist Party.

Mr. Forer: Just a moment.

As I understand the witness' answer to what the Org Bureau of the Communist Party is, the answer was in the present. His previous testimony related to the spring of 1932. Certainly there has been no qualification so the witness can testify what, if any, is the Org Bureau of the Communist Party as to the present. Unless qualifications are laid to establish that he is competent to testify on this subject as of the present, I move that the answer be stricken.

Mr. Morrissey: Your testimony was relative to 1932 in the description you have given?

The Witness: That is correct.

Mr. Forer: That satisfies my point.

By Mr. Maddrix:

Q. Do you know what the Org Bureau was from 1932 to 1950, when you got out of the Party?

A. There was no such thing from 1932 to 1950. There was a redesignation of names in the Communist Party, the various committees.

For example, the Central Committee in the later years [fol. 982] was known as the National Committee. The Pol Bureau or Political Bureau of the Communist Party was known as the National Board. The Org Bureau was later on known as the Org Commission and remained as such, Organizational Commission.

There was a process of Americanization in redesigning names in the Communist Party. So, therefore, there is that revolutionary process in these names.

Q. While you were in Cleveland, did you hold any other position except editor of the Hungarian Communist Party newspaper?

A. Yes. I organized a school over there, a Party school, and also I was one of the editors of the Hungarian daily Communist paper in Cleveland, Ohio, called the Ej Elore.

Shall I go on?

Q. Continue.

A. I functioned up until the latter part of 1932. After I finished this school over there, after the school graduated, I left for New York.

For a while I was working with my dad out in Ridgewood, New Jersey. He was a contractor out there. I worked with him. I took a part-time assignment from the Party on the Language Department of District 2 of the Communist Party.

In 1933, I received an assignment as section organizer of the Communist Party in New York City, in Section 18, [fol. 983] and I functioned in that capacity up until April 1936.

In 1936, I was reassigned as district organizer of the Communist Party for the State of West Virginia. I functioned in that capacity until the end of 1940.

At the beginning of 1941, I went to a national training school of the Communist Party in New York. After graduation from that school, I was assigned to the Nationality Groups Commission of the Communist Party, and secretary of the Hungarian National Bureau. I functioned in those capacities up until November 1942.

In addition to that, for about five months or six months I was also National Secretary of the Hungarian Section of the International Workers Order. I was drafted in 1942, November, into the Army. I served up until June 1945.

I was in Psychological Warfare during the war. I was 25 months overseas.

Upon my return, I was again assigned to the Nationality Groups Commission of the Communist Party.

Mr. Forer: What?

The Witness: Nationality Groups Commission of the Communist Party, and Secretary of the Hungarian National Bureau of the Communist Party.

I took sick at the end of 1945, and then around the summer of 1946, I was again assigned in charge of the Building Trades of the Communist Party in New York.

[fol. 984] I functioned in that capacity until about March 1947. In March 1947, for a few months I was in the concentration region of New York on the waterfront, in the Chelsea area.

In May 1947—

By Mr. Maddrix:

Q. What type of job did you have on the waterfront?

A. At that time, we were reorganizing the whole Party apparatus in New York based on the decisions of the 1945 convention to institute and put into effect a concentration policy. On that basis we reorganized the whole organizational structure in Manhattan. We established regions, six regions, in Manhattan.

I was in charge of one of these regions for a few months there.

Q. What I am trying to develop is whether or not these were regions of the Communist Party.

A. They were.

Q. All right.

A. Then in May 1947, I became the head of the New York State Review Commission of the Communist Party, and in 1948, September, I became a member of the National Review Commission of the Communist Party, and I functioned in both of these capacities up until I left the Communist Party on the 17th of January, 1950.

[fol. 985] In addition to this, I was attending training schools, and I taught in Party schools from time to time, particularly in parts of 1946, 1947, and parts of 1948. The subject matters that I taught were Marxism-Leninism, political economy, and Party organization and Party structure.

I attended plenary sessions of the Central Committee and National Committee of the Communist Party in the years

1936, '37, '38, '39, '40, '41. I attended national conventions of the Communist Party in 1936, '38, and '42, '45, and '46.

As briefly as possible, that covers my Party activities.

Q. Let me ask one or two questions. Please explain what you meant when you used the word "plenary" sessions.

A. Plenary sessions of the Central Committee or the National Committee were held twice a year. They were enlarged National Committee meetings or Central Committee meetings of the Party, to which district organizers and individual Party leaders were invited, in addition to the National Committee itself.

Q. Will you also explain for the Chairman what the functions and duties were of the New York State Review Commission of the Communist Party?

Mr. Forer: Just a moment.

As I understand it, this is during the time that he was [fol. 986] a member of it?

Mr. Maddrix: This is during 1947 to January 1950.

The Witness: The Review Commission was the old Control Commission of the Communist Party, with specific responsibility to safeguard the Marxist-Leninist purity of the Communist Party, to develop and increase vigilance in the ranks of the Communist Party against infiltration of anti-Party elements, to hear disciplinary cases, to review disciplinary cases that were heard and decided upon in lower organizations of the Communist Party.

These were, in the main, the functions of the Review Commission of New York State in those years.

By Mr. Maddrix:

Q. Would those same duties apply to the National Review Commission of the Communist Party, except on a different scale?

A. Yes, and in addition to that, to build State Review Commissions in the weaker districts where they hadn't established Review Commissions yet.

Q. I think you told us something about being connected with the Psychological Warfare while you were serving in our Armed Forces. Let me ask, did you have any other

special training while in the Service which you have not mentioned?

A. Yes. I am a graduate of the War Department Military Intelligence at Camp Ritchie, Maryland.

[fol. 987], Mr. Forer: Excuse me a moment. I didn't quite catch that answer. "I am a graduate of the War Department"?

Mr. Morrissey: Read it back.

(Whereupon, the last answer was read by the reporter.)

By Mr. Maddrix:

Q. What do you mean by the fact that you attended the War Department's Military Intelligence, Mr. Lautner?

A. That was my training that I got in the Army. I was assigned to the school over there, and I graduated from that school.

Q. Then there was a school, a Military Intelligence school?

A. That is right.

Q. During your connection with the Communist Party, did you become acquainted with an organization known as the American Committee for Protection of Foreign Born?

A. Yes.

Q. When did you first learn of its existence?

Mr. Forer: Just a moment. I want to object to this testimony on the ground that since, as I understand it, the question relates to the time he was a member of the Communist Party, and since he left the Communist Party on January 17, 1950, which is months before the Act was enacted, the question relates to a period which is of no relevance in this proceeding because it obviously relates to a [fol. 988] time before the enactment of the McCarran Act. For that reason I object to the testimony as too remote.

Mr. Morrissey: The objection will be overruled.

Mr. Maddrix: Is there a question pending?

(Whereupon, the pending question was read by the reporter.)

The Witness: In the late 1939's, in various—

Mr. Forer: Just a moment. The question has been answered.

By Mr. Maddrix:

Q. Under what circumstances?

A. In the Communist Party organization from time to time the question of giving aid and support—

Mr. Forer: Oh, now.

The Witness: —for the Protection of the Foreign Born came down in the form of instructions. It was raised at committee meetings, at section organizers' meetings. I used to get district organizers in West Virginia for the Protection of the Foreign Born. In that way it was brought to the attention of Party functionaries in the Communist Party.

Mr. Forer: Just a moment.

I move to strike that answer on the following grounds:

In the first place, it is not responsive to the question.

[fol. 989] In the second place, it seems to deal with an extremely remote period.

In the third place, it is just a vague generalization, impossible to cross-examine on, to the effect that he heard it at various times and places in the Communist Party. There has been no statement as to time, place, what, where, when, and so forth.

I think that that kind of testimony is of no value, is immaterial, irrelevant.

Finally, I think it is incompetent, because whatever he heard in the Communist Party is not binding on the Respondent and is hearsay.

Mr. Morrissey: The motion will be denied.

The Witness: I didn't finish.

By Mr. Maddrix:

Q. Finish, Mr. Witness.

Mr. Forer: I am sorry, Mr. Maddrix.

The Witness: In the spring of 1942 or thereabouts, while a member of the Nationality Groups Commission of the

Communist Party, we were assigned to make a decision as to personnel in the Protection of the Foreign Born.

Mr. Forer: Wait a minute.

The Witness: I didn't finish my answer.

Mr. Forer: I want to interrupt at this moment.

Mr. Morrissey: Are you objecting?

[fol. 990] Mr. Forer: Yes, because, Mr. Chairman, the question was, "Under what circumstances did you learn of the existence of the American Committee for Protection of Foreign Born?" and now he is going on with a very long narration about decisions, and so forth and so on. The question is being treated as if Mr. Maddrix had said, "Tell us what you know about the American Committee for Protection of Foreign Born," and that is all. That is not a question-and-answer type of proceeding.

Mr. Maddrix: I will ask him the question.

Mr. Morrissey: Will you reframe your question, Mr. Maddrix?

Mr. Maddrix: I don't have any to reframe, because I think I have an answer to the previous one, but I will pose a new one if it is all right.

Mr. Morrissey: That is all right. You may proceed.

By Mr. Maddrix:

Q. Did you know in the year 1942—we will pinpoint that year—a man by the name of Abner Green?

A. Oh, yes.

Q. Do you see him here in the room today?

A. Yes.

Q. Where is he?

A. He is sitting at the counsel table there.

Q. In 1942, were you holding any official position in the [fol. 991] National Communist Party of the United States?

A. Yes.

Q. What was that position?

A. I was a member of the Nationality Groups Commission of the Communist Party.

Q. Did you have occasion to come in contact with Mr. Green during that year 1942?

A. Yes.

Q. I want you to tell the Chairman all the circumstances surrounding that contact.

Mr. Forer: Wait a minute. All the circumstances surrounding that contact? I think that question is too general and too vague, and I object.

Mr. Morrissey: The objection will be overruled.

The Witness: Avro Landy, who was the secretary—

By Mr. Maddrix:

Q. We want to get the spelling on the record.

A. A-v-r-o, L-a-n-d-y.

—who was secretary of the Nationality Groups Commission, and myself, were assigned, the two of us were assigned to listen and to make a decision in relation to a problem that arose in the Protection of the Foreign Born leadership between Abner Green and Irving Novak, who was the leader of that organization at that time.

Q. Who was the leader at that time?

[fol. 992] A. Novak.

After listening to both sides, it was clear that a very unhealthy working relationship existed between the two, a clash of personalities, and that type of situation, and we decided, the Nationality Groups Commission, to remove Novak and to put Abner Green as head of the organization, the American Committee for Protection of Foreign Born, and that decision was carried out.

Mr. Forer: Just a moment.

Is it clear on the record, Mr. Chairman, that I have a standing objection to this witness' testimony about the American Committee for Protection of Foreign Born during the time that he was in the Party, on the grounds of remoteness, because it is before the Act? I don't want to have to keep popping up.

Mr. Morrissey: You made an objection.

Mr. Forer: May I have that as a standing objection?

Mr. Morrissey: No. I would rather you would interpose your objections. It is not the policy of the Board, I think, to have standing objections.

Mr. Forer: I meant just on this ground. Otherwise—

Mr. Morrissey: You have an objection to this line of testimony.

Mr. Forer: That is what I mean.

[fol. 993] Mr. Morrissey: When he is through, it would be my suggestion, in order to preserve the record, your idea of the record, that you make a motion to strike the testimony, and then you have a ruling on it from both angles, and that would save your continual objections.

Mr. Forer: I want first to protect the record, and secondly, I don't want to keep interrupting to make unnecessary objections.

As I understand it now, I have an objection to his entire line of testimony about his dealings or knowledge of the American Committee for Protection of Foreign Born during the time he was in the Communist Party, on the ground of remoteness. I have objected to that entire line, or I certainly intended to.

Mr. Morrissey: I think the record is clear on that. I overruled the objection.

You may proceed, Mr. Maddrix.

By Mr. Maddrix:

Q. Under what authority were you and Mr. Landy operating at this particular time?

A. Under the authority of the Central Committee of the Communist Party, delegated to us to deal with this particular case, and on the authority that both were members of the Communist Party and subject to Party discipline and Party decisions.

[fol. 994] Q. As a result of the decision made by you and Mr. Landy, who was made head of the American Committee for Protection of Foreign Born?

A. Abner Green.

Q. That is the same Abner Green who sits alongside of Mr. Forer at the trial table here today?

A. That is correct.

* * * * * * *

[fol. 995] Q. Where did this meeting between Mr. Green and Mr. Novak and Mr. Landy and you take place?

Mr. Forer: Wait a minute. That is assuming matters that are not in evidence.

Mr. Maddrix: Surely we got in evidence that there was a meeting.

Mr. Morrissey: The objection will be overruled.

You may answer, if you know.

The Witness: That meeting took place at the national headquarters of the Communist Party at 35 East 12th Street, on the 9th floor, in New York City.

Mr. Morrissey: Can you fix the date?

The Witness: At the beginning of 1942, the early part of 1942. That is the closest I can state.

By Mr. Maddrix:

Q. Who was present there?

A. Only the four of us—Landy, Green, Novak, and myself.

Q. Did Mr. Green and Mr. Novak have an opportunity [fol. 996] to express their side of this dispute?

A. Yes, both sides were expressed, and the conclusion was that there was a bad working relationship between the two.

• • • • • • •

[fol. 1004] Q. Do you know whether or not the American Committee for the Protection of Foreign Born during the time you were a member of the Party had any connection whatsoever with the Party, speaking of the Communist Party?

Mr. Forer: The question is: Do you know?

Mr. Maddrix: That is right.

Mr. Forer: No objection. I am not saying anything.

The Witness: Yes.

By Mr. Maddrix:

Q. What connection, if any, did it have?

Mr. Forer: I object. It is too general a question.

Mr. Morrissey: The objection is overruled.

[fol. 1005] The Witness: The functionaries of the Protection of the Foreign Born, the top functionaries, like

Abner Green and Harriet Baron, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organizations.

Mr. Forer: I move to strike that testimony as being completely opinion and conclusory, or at least that part of the answer about "had carried out Party policies" and what follows it, as being conclusory and opinion testimony.

Mr. Morrissey: The motion to strike will be denied.

* * * * * * *

By Mr. Maddrix:

Q. You mentioned a while ago about the Central Committee of the Communist Party having vested authority in this Nationality Groups. Please explain for the Chairman, if you know, what the functions of the Central Committee were.

[fol. 1006] A. The Central Committee of the Communist Party is a body of Party leaders elected at a convention, who have the responsibility to carry out the Party decisions between conventions.

These Party decisions, to be effectively translated into activities, raises the problem of many phases of activities, a multitude of activities. In order to carry out these activities in an organized fashion, the Central Committee organizes and appoints subcommittees, subcommittees that specialize in certain types of activities, like the Nationality Groups Commission which specialized on nationality groups' problems pertaining to Communist Party policies. It supervised the activities of the Language Bureaus of the Communist Party. It supervised the line of the language Communist press. It supervised and gave direction and guidance to all activities pertaining to nationality group problems and work.

The Labor Committee or Trade Union Department of the Party supervised and gave guidance and direction to all problems pertaining to trade unions and Party policies in the trade union movement.

The Youth Commission or Youth Committee, to give guidance and direction to all problems pertaining to youth work on the part of the Communist Party.

So these subcommittees specialized and helped to bring [fol. 1007] about a correct approach and a proper and correct decision on the part of the Central Committee in various problems. These were the functions of these subcommittees that we mentioned.

Q. You mentioned having attended the National Committee meetings of the Communist Party. Did you mention having attended the national convention in 1940?

A. Yes.

Q. Did you hold any official position at that convention?

A. Yes. In the 1940 convention, I was on the presiding committee of the convention.

Q. Is that the presidium?

A. That is the presidium of the convention. It is elected as the convention assembles, and it is in charge of the convention until the new Central Committee or National Committee is elected.

Q. Let me ask you this question: During any of these national conventions of the Communist Party which you attended, did you ever see Abner Green at any of those conventions?

A. He was at the 1948 national convention of the Communist Party, which was held in the summer of 1948 at the Riverside Plaza in New York City.

* * * * * * *

[fol. 1012] By Mr. Maddrix:

Q. Mr. Lautner, you mentioned prior to the recess one [fol. 1013] Harriet Baron. I want to ask you whether or not you know of your own knowledge whether Harriet Baron was a member of the Communist Party.

A. Yes.

Q. How do you know that?

A. I had party business with her. As late as 1949, she came up to my office, which was at Party headquarters at 13 East 12th Street, and urged me to convey a message that was given to her by one Sam Carr, who was on Ellis

Island at that time, and the message was to go to a relative of Norman Schrank, S-c-h-r-a-n-k. The message was that this relative should get rid of a package.

I conveyed the message to Norman Schrank. I carried out the message from Sam Carr to this relative of Norman Schrank's.

Harriet Baron attended Party meetings in the 1930's in my presence; in the 1940's in my presence. • • •

• • • • • • • •

[fol. 1021] Mr. Maddrix: Mr. Reporter, will you please mark this exhibit Petitioner's Exhibit No. 6 for identification.

(The document referred to was marked Petitioner's Exhibit No. 6 for identification.)

Mr. Maddrix: Mr. Chairman, Petitioner's Exhibit No. 6 for identification is a copy of the Daily Worker dated January 20, 1948. We wish at this time to offer in evidence from page 1 of this issue, a picture of Claudia Jones and a description which follows under the picture, referring to her difficulties with the Immigration and Naturalization Service, and the American Committee for Protection of Foreign Born's participation in her difficulty.

Mr. Forer: I object. In the first place, this is not admissible as evidence of the facts which are recited in this [fol. 1022] newspaper. With the previous witness, I showed the witness a newspaper item. As I remember, it was the Boston Herald, or something of that sort. Mr. Maddrix himself raised the point that it would be admissible only if the offer was limited to proof of the fact that the article appeared, and not proof of the facts stated in the article. It was on that understanding that my newspaper exhibit, which was the Boston Herald, was admitted.

Unless the offer is similarly limited here, that this article is offered to show that such an article appeared in the Daily Worker, then clearly it falls within the ruling before, and cannot be admitted as proof of the recital of facts stated in here.

For instance, it says here that Claudia Jones "was arrested on a deportation warrant last night." The fact that it appears in the Daily Worker is not proof of that fact, any more than when this Boston Herald article said that the New England Committee for Protection of Foreign Born had been organized in 1952 it was proof of that fact.

If he wants to identify Claudia Jones, let him do it through the witness, who has already done it, or through some other witness. Unless the offer is so limited, I think it is clearly inadmissible.

Before I go on with my other objections, I would like to know if Mr. Maddrix would so limit it.

[fol. 1023] Mr. Maddrix: I will limit it, but I would like to say this, first. The article also states not only that she was arrested, but that she was a member of the National Committee of the Communist Party, and also the American Committee for Protection of Foreign Born had assigned an attorney to represent her.

* * * * * * *

I will say, in answer to your question, Mr. Chairman, that we are offering this under (2)(d) of the petition, showing the favorable publicity which the Communist Party gave to the American Committee for Protection of Foreign Born.

* * * * * * *

[fol. 1024] Mr. Maddrix: Yes. Furthermore, it could be under (3)(a), too. We will limit our offer—I am using the [fol. 1025] wrong expression; not limit. We will proffer this exhibit under the allegation of the petition which shows favorable publicity by the Communist Party to this organization.

* * * * * * *

[fol. 1028] Mr. Morrissey: Petitioner's Exhibit 6 will be [fol. 1029] admitted on the theory and in connection with or in accordance with the allegations in the petition as to favorable publicity by the Communist Party.

(The document referred to was received in evidence as Petitioner's Exhibit No. 6.)

* * * * * * *

[fol. 1032] June 30, 1955

JOHN LAUTNER, the witness on the stand at time of recess, resumed the stand and testified further as follows:

Direct examination (continued).

• • • • • • •

[fol. 1073] Q. Do you know to whom the Communist Party members reported for activities in the 1946 and 1948 political campaigns in New York City?

• • • • • • •

[fol. 1074] Mr. Morrissey: The objection will be overruled.

The Witness: They reported to Abner Green.

By Mr. Maddrix:

Q. How do you know?

A. I was so instructed, to instruct Party members in my [fol. 1075] organization in 1936 and also from State headquarters of the Communist Party in 1946 for key Party figures to report to Abner Green on First Avenue between 78 and 77 Street on the East Side of the Street, in a building where the headquarters of the ALP were, and where Abner Green was in charge in assigning Party members who were sent to him in election campaign work.

Mr. Forer: Just a moment. I move to strike that answer not only on the grounds of the objections I made to the question, but on the further ground that the answer develops that it is complete hearsay because he said he was instructed in 1936. I therefore move to strike the answer.

Mr. Morrissey: The motion to strike will be denied.

By Mr. Maddrix:

Q. Mr. Lautner, let me see if I understand the period. Did you mention 1936 and 1948?

A. No, 1946 and 1948.

• • • • • • •

[fol. 1076] Cross examination.

By Mr. Forer:

* * * * * * *

[fol. 1083] Q. Mr. Lautner, where do you live?

A. My address is the Department of Justice Building, Room 3266, Washington 25, D. C.

Q. Do I understand that you sleep there?

A. No. That is my address, where you can contact me any time you feel like it.

Q. Now, Mr. Lautner, suppose you answer my question, which was, not your business address, but where do you live?

A. I wouldn't give you my address where I live, because—

Q. Just a moment.

A. You raised a question. Let me answer you.

[fol. 1084] Mr. Morrissey: Just a moment.

By Mr. Forer:

Q. You just said you wouldn't answer. I am not interested in why you won't answer.

A. But you should be.

Mr. Morrissey: Let counsel finish with his question, Mr. Lautner.

By Mr. Forer:

Q. Do I understand that you are refusing to answer where you live?

A. If you give me personal guarantees as to my—

Mr. Morrissey: Mr. Lautner, you can answer that "yes" or "no," can you not?

The Witness: Well, I answered, Your Honor, with a qualification. If he can give me guarantees as to my personal safety, I will answer his questions. If he cannot give those guarantees, I wouldn't.

Mr. Morrissey: I think all counsel wants to show is if you refuse to give your address. You may state that you do, or you may give it.

The Witness: Your Honor, I gave him an address.

Mr. Morrissey: In other words, you don't want to give your home address, is that right?

The Witness: Under certain qualifications I would.

Mr. Morrissey: No.

[fol. 1085] The Witness: I can't give a "yes" or "no" answer to that question. Under certain stipulations, I would.

By Mr. Forer:

Q. You mean that I guarantee your personal safety?

A. That is correct, you and your organization.

Q. You seem to have a lot of confidence in me.

Mr. Morrissey: This is not material at all.

The Witness: It is very important to me.

Mr. Forer: Mr. Chairman, I ask that the witness be directed to answer my question, which was: "Where do you live?"

Before ruling on that, Mr. Chairman, I would like to call your attention to the case of Alford v. United States, reported in 282 U.S. 687, which was decided by the Supreme Court as recently as February 24, 1931, in which the Court held—and I can summarize it perhaps by reading the last headnote:

"Refusal of the court to permit a witness for the prosecution to be asked on cross-examination where he lives is prejudicial error."

• • • • • • •

[fol. 1087] Mr. Forer: I certainly do, but I think that flies right in the face of that Supreme Court decision. In view of the fact that I am not now permitted to get an answer to that question, I now move that all of this witness' testimony heretofore in this proceeding be stricken because, as the Supreme Court has pointed out, I have been denied the right of cross-examination.

Mr. Morrissey: I don't think it is a material inquiry in this case, and I have so ruled. You may proceed with your next question.

Mr. Forer: I just want to tell you that is exactly what the trial court said in the Alford case, and the Supreme

Court said it is always a material inquiry on cross-examination.

Mr. Morrissey: You may proceed with your next question.

By Mr. Forer:

Q. As a matter of fact, the reason that you gave for refusing to answer my question is a complete invention which you have made up to glamorize and dramatize yourself, isn't that true?

Mr. Maddrix: Just a moment.

The Witness: It is not tru[illegible].

Mr. Morrissey: Just a minute. Counsel is objecting.

Mr. Maddrix: We object to the question.

[fol. 1088] Mr. Morrissey: The objection is sustained. The answer will be stricken.

Mr. Forer: I think it goes to this witness' credibility.

• • • • • • •

[fol. 1093] Q. Do you recall in your direct testimony testifying to a meeting held in 1942 at which were present Abner Green, Carl Novick, Avro Landy, and yourself. Do you recall testifying to that meeting?

A. I recall testifying to a meeting, but not the names you stated over there. It was Avro Landy, Irving Novak, Abner Green, and myself.

Q. How do you spell "Novak"?

A. N-o-v-a-k.

Q. N-o-v-a-k?

A. I know his name phonetically. I don't know how he spells it. It could be "ck" at the end. I don't know.

Q. It could be N-o-v-a-c-k?

A. It could be. I know his name phonetically.

Q. Would you accept my spelling that it is N-o-v-i-c-k?

[fol. 1094] A. It could be.

Q. As I recall your testimony yesterday, I believe you said that this meeting was in the spring of 1942, but I am not certain about that. Would you now give us your best recollection of the month in which that meeting was held?

A. I couldn't. That is the best recollection that I have. I know it was the early part of 1942 because of other events which took place around that time.

Q. You now say the early part of 1942. I have a recollection of your saying in the spring of 1942.

A. It could be, yes.

Q. When you say the early part of 1942, to the best of your recollection—

Mr. Maddrix: He has given his best recollection.

Mr. Forer: No, no. He has given me an answer that is a little indefinite to me. For instance, I don't think "in the spring of 1942" is the early part of 1942.

The Witness: That is the best I can do.

By Mr. Forer:

Q. What is the best you can do?

A. The way I testified to.

Q. What bothers me is that you testified to the fact in two ways, which by my interpretation of words are not altogether consistent. I am not saying you are being inconsistent, but as I understand, you said the early part of [fol. 1095] 1942, and you have also said in the spring of 1942. By some way of thinking, the spring of 1942 is the early part of 1942, but was it the spring of '42 or the winter of '42?

A. I can't improve on that. That is the best of my recollection.

Q. You can't improve on what? Is it the spring of '42 or early in '42?

A. I can't improve on my testimony to that effect.

Q. I want you to tell me now whether, to the best of your recollection—you say you can't improve on that.

A. That is the best of my recollection.

Q. What is the best of your recollection?

A. The one I gave you and testified to.

Q. You gave two. I want you to tell me now, what is the best of your recollection?

A. The early part of 1942 or the spring of 1942. That is the best of my recollection.

Q. The early part of 1942 or the spring of '42?

A. That is correct.

Q. At that time, at the time of this meeting, what was your position in the Communist Party?

A. I was a member of the Nationality Groups Commission of the Communist Party, and National Secretary of the Hungarian Bureau of the Communist Party.

* * * * * * *

[fol. 1139] Q. In the course of your work as an official of the Communist Party, naturally you were deeply interested in the fact that there were deportation cases against members of the Communist Party; correct?

A. Yes.

Q. So it would be only natural when the American Committee for Protection of Foreign Born defended members of the Communist Party, you would know about that; correct?

A. Most likely, yes.

Q. Most likely. It wouldn't be so natural when they defended people who weren't members of the Communist Party?

A. I beg your pardon?

Q. It wouldn't be so natural for you to know of particular cases in which they defended foreign born people who were not members of the Communist Party?

A. No, that would be all right. In fact, that would add to the prestige of the organization. It wouldn't detract. It would increase the prestige of the organization, the more individuals they could come to defend.

Q. I am not going to move to strike that, either, but I don't think it answered my question. My question was—let me go back.

It would be natural for you to know the names of individual Communists who were defended by the Committee, [fol. 1140] not all of them.

A. Most likely, yes.

* * * * * * *

[fol. 1194] Q. I believe you testified on direct that you saw Mr. Green at some meetings of the Communist Party?

Q. What was the last such meeting at which you saw Mr. Green—strike that.

When was the last such meeting?

A. My recollection is at the 1948 convention in Riverside Plaza, he was there.

Q. In 1948. Your recollection is that as far as you can [fol. 1195] recall, that was the last time?

A. I saw him in the Party building after that, on numerous occasions, but that is the last meeting where I saw him, that I recollect, which constituted a Communist Party meeting.

Mr. Forer: I move to strike as not responsive to the question, "saw him at the Communist Party building on numerous times."

The question was, what was—was the 1948 conference or convention the last meeting at which you saw him.

Mr. Morrissey: Your motion to strike will be denied. The answer may stand.

By Mr. Forer:

Q. Now, what was—what meeting of the Communist Party—and I am talking about a meeting—did you see Mr. Green at, before the—strike that.

When, before the 1948 conference, was the last Communist Party meeting at which you saw Mr. Green? The question is just when—I am just asking for a time, if you can give it.

Mr. Morrissey: Do you understand the question, Mr. Lautner?

The Witness: Yes.

Mr. Morrissey: You may answer.

The Witness: I saw him at the end of '45 and the beginning of '46, in that period of time, at one of the national meetings.

[fol. 1196] By Mr. Forer:

Q. Now, you testified on direct that you saw Harriet Barron at Party meetings. You recall that testimony, do you not?

A. Yes.

Q. What was the last Communist Party meeting—strike that.

When was the last Communist Party meeting at which you saw Miss Barron?

A. In 1949, in my office, during that incident that I described in my direct testimony.

Q. Well, as I remember—

Mr. Morrissey: That is rather vague, I think, Mr. Lautner.

The Witness: I can ascertain—

Mr. Forer: Well, I am going to inquire further on that.

By Mr. Forer:

Q. As I remember your direct testimony was to the effect—and see if I am talking about the same incident—that Miss Barron got in touch with you and asked you to meet somebody coming back from Ellis Island?

A. The same time I was out at Ellis Island.

Q. She got in touch with you by telephone?

A. No, she came to my office, that somebody came out to [fol. 1197] see Sam Carr. Who it was, she didn't say, with a message to get in touch—

Q. I don't want to know the details, but just let me ask the question.

You have already testified on this subject, so your description of it is there, but my point is she came to you with a request of some kind?

A. Yes.

Q. Now, that is not a Communist Party meeting, you wouldn't consider that a Communist Party Meeting, would you?

A. I was not hanging around on the street corner. I was a Communist Party official, and she came to me as an official, with confidential material in her mind to discuss with me.

Q. Yes, that I understand.

A. All right.

Q. I suppose when you were a Communist Party official, you had an office at Communist Party Headquarters, is that correct?

A. That is correct.

Q. And I suppose from time to time a lot of different people came to see you on different matters?

A. Yes, sir.

Q. Including people who so far as you know, were not members of the Communist Party?

[fol. 1198] A. Not in my office, they didn't get in there.

Q. They didn't get in.

A. No.

* * * * * * *

Q. When you testified that Harriet Barron attended Communist Party meetings, you were using the word "meetings", so as to include—

A. Plural.

Q. I know plural. You were using the word "meetings" —strike that.

When you so testified, the word "meetings" was broad enough to include her coming to your office and holding a conference with you?

A. That was the last time I had contact with her, personally. The question was when was the last time I saw her, or something like that.

Q. Oh, perhaps you misunderstood the question?

A My answer was, the last time I saw her in my office.

Q. Mr. Lautner, the question that I asked you, first, was what was the last Communist Party meeting at which you saw Harriet Barron?

Don't you remember that?

[fol. 1199] A. Yes, and I testified that the last time I saw her was in my office on party business. Besides that, she was a staff worker at a number of plenums in 190 at National Conventions, and these were all so-called formal party meetings.

Q. Just a minute. Now, I don't think that I still have an answer to the question that I asked. Using the word "meeting" in the orthodox meaning of the word, that is a Party meeting, a formal meeting, a meeting of an organization and of the party or a body of the party, when was the

last such meeting at which you saw Harriet Barron. It is a simple question.

A. I have no recollection at this time. I know I saw her from time to time from 1936, on, at National Plenums in the capacity of a Staff Worker.

I saw her at conventions. I saw her in the Party building. She came to me on this particular occasion. I was not in the same branch with her.

• • • • • • •

[fol. 1316] July 6, 1955

BERNICE BALDWIN was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Knight:

• • • • • • •

Q. Will you tell us, please, when you became a member of the Communist Party?

A. Yes. In the early part of 1943.

• • • • • • •

[fol. 1334] Q. Do you know whether or not Saul Grossman is a member of the Communist Party?

A. Yes, I do.

Q. What is the basis of your knowledge, please?

A. I attended closed meetings with Saul Grossman, many [fol. 1335] closed Party meetings, and also Party school, Communist Party school.

Q. Now, did Saul Grossman perform work exclusively for the Civil Rights Congress, at that time?

A. Your question is a little broad, there. He did in connection with the Communist Party work. He was given consultation and advice, but he was operating, yes, from the Civil Rights Congress office.

Mr. Forer: I move to strike the entire answer as not responsive.

Mr. Morrissey: The motion to strike will be denied and the answer may stand.

By Mr. Knight:

• • • • • • •

Q. What was the nature of the work the Civil Rights Congress was doing, at that time?

A. Primarily raising funds—bail funds for deportees, or people who had been picked up by Immigration and Naturalization Service and for the Communist leaders who had been indicted.

Q. Now, did the Civil Rights Congress subsequent to the appointment of Saul Grossman as executive secretary, [fol. 1336] did they still continue to raise bail money for deportees?

A. Yes, but the load became too heavy, at that time, and that is when they branched off.

• • • • • • •

Q. Mrs. Baldwin, did there come a time when the work [fol. 1337] load of the Civil Rights Congress became too heavy for that organization to handle?

• • • • • • •

Q. What if anything was done, to your knowledge, to alleviate that situation?

A. There was a special committee set up to take care of the foreign born or "Nationalist" groups, as we called them, of the Communist Party.

Q. What was the name of that committee?

A. That was the Michigan Committee for the Protection of the Foreign Born.

Q. Can you recall who became the head of the Michigan Committee for the Protection of the Foreign Born, at that time?

• • • • • • •

[fol. 1338] A. Saul Grossman.

• • • • • • •

[fol. 1339] Q. Mrs. Baldwin, do you know what the purpose of this Michigan Committee for the Protection of the Foreign Born was to be?

A. Yes.

Q. Will you tell us what that purpose was, please?

Mr. Forer: I object. This is calling for general conclusions and also it is irrelevant and not connected to the respondent.

Mr. Morrissey: The objection will be overruled.

You may answer.

The Witness: Yes. To protect and to help defray court costs, to raise bail money for the foreign born people of the Communist Party.

• • • • • • •

[fol. 1343] By Mr. Knight:

Q. Mrs. Baldwin, did you ever attend any national conference of the respondent organization, at any time?

A. Yes, I did.

[fol. 1344] Q. Would you tell us in about what year that was, please, to your recollection?

A. Yes, that was in the winter of 1949.

Q. Have you testified that you had been a member of the party?

A. Yes.

Q. Do you recall if anybody assigned you to attend this conference?

A. Yes.

Q. Who was that, please?

A. I was approached first by Harry Boskey, who was the counsel member of the Auto Miscellaneous Section of the Communist Party, to represent the Auto Miscellaneous Section at a national conference for the Michigan Committee for the Protection of the Foreign Born.

The question was taken up before my organizer and organizational secretary of this section and they delegated me as a representative to that.

Q. As a result of being so delegated, did you attend such a conference?

A. Yes, I did.

Q. Where was it held, please?

A. It was held in Detroit.

Q. Did you have any official duties or position in connection with that conference?

[fol. 1345] A. Yes, I was one of the registrars.

• • • • • • •

[fol. 1346] Q. Did Esther Boskey give you any orders or instructions with regard to your duties at this conference?

• • • • • • •

The Witness: She introduced me to Harriet Barron.

By Mr. Knight:

Q. Did you have a conference with Harriet Barron?

A. Yes, she was in charge of the registrars for the conference.

Q. You were a registrar?

A. Yes.

Q. Did Harriet Barron give you any instructions as to what you should do at this conference?

A. Yes.

Q. What were those instructions, please?

[fol. 1347] A. That we were to take the name, the state and the occupation.

Q. Mrs. Baldwin, can you recall whether or not there was a person present at this conference named Abner Green?

A. Yes.

• • • • • • •

Q. Do you recall whether or not Abner Green addressed this conference, of which you are speaking?

A. Yes, he did.

Q. Can you recall the general nature of his remarks?

A. He gave a resume of the work done and to be done. In other words, he gave the keynote address. As I recall, he was Chairman of the first session in the morning.

• • • • • • •

[fol. 1348] Q. Now, can you recall one or two or three individuals who might stick out in your memory as having been speakers at this conference?

A. As I recall seated at the platform was Fritz Rust and a Russell Emin.

Q. That is Fritz Rust and Russel Emin?

A. Yes, and a deportee from the State of New York was Beatrice Siskin Johnson, and A. Ganley and at the later session, Karl Winter.

• • • • • • •

[fol. 1349] Q. Do you know whether or not Karl Winter was a member of the Communist Party?

A. Yes, he was.

Q. Do you know whether or not Fritz Rust was a member of the Communist Party?

A. Yes.

Q. Do you know whether or not Russell Emin, E-m-i-n, was a member of the party?

A. Yes.

• • • • • • •

[fol. 1561] July 7, 1955

BARBARA HARTLE called as a witness and, having been first duly sworn, was examined and testified as follows:

[fol. 1562] Direct examination.

By Mr. Maddrix:

• • • • • • •

[fol. 1570] A. After being chairman of the King County Communist Party, I became secretary of the Northwest District, or District 12 of the Communist Party.

Q. And when was that?

A. In 1945, 1946.

Q. Now, District 12 at that time, in 1945 and 1946, comprised what states?

A. The States of Washington, Oregon and Idaho.

Q. Was there a chairman of this Number 12 District?

A. Yes.

Q. At the time, I am speaking, in 1945 and 1946?

A. Yes.

Q. Who was that?

A. Henry Huff.

Q. Now, would it be fair to say that the chairman was also the Number 1 position in the district?

A. Yes. That was the Number 1 position.

Q. Now, bearing that in mind, in what position was the secretary of the Northwest District of the Communist Party, in Number 12?

A. The second position.

• • • • • • •

[fol. 1578] July 8, 1955

Q. Did you ever hear of an organization known as the American Committee for the Protection of Foreign Born?

A. Yes.

Q. About when did you first hear of this organization?

A. I heard of it upon joining the Communist Party in late 1933, or early 1944.

Q. While a member of the party, what did you hear about it?

Mr. Forer: I object to that question on a number of grounds. First of all, the question is much too general and vague; secondly, it has no precision as to time or place from whom she heard, and so on; thirdly it is irrelevant; fourthly, it is remote, and fifthly it is hearsay and it is not binding on the Respondent.

This is just an invitation for—and I might add this is just an invitation for a narration. I don't think that kind of question should be allowed.

Mr. Morrissey: The objection will be overruled and she may answer.

The Witness: May I hear the question repeated?

[fol. 1579] (The question was read.)

The Witness: I heard that the American Committee for the Protection of Foreign Born was an organization of the Communist Party that would defend Communists from being deported by the Immigration Department and attempt to prevent them from being deported. And persons charged with being Communists could go to the American Committee and receive help from them in fighting their cases.

Mr. Forer: Just a moment. Now, I move to strike that answer on the ground that it is obviously, on its face, incompetent and improper testimony.

Mr. Morrissey: The motion to strike will be denied.

By Mr. Maddrix:

Q. Where did you hear these discussions take place? Within what organization of the Communist Party?

A. I heard the discussions in unit meetings which I attended and in functionaries' meetings which I attended, of the Communist Party in Spokane, Washington.

Q. Now, let me ask you whether or not you heard the American Committee for the Protection of Foreign Born discussed at any District meeting, and if so, please testify to the time.

A. Yes. I heard discussions at District meetings concerning the American Committee, in 1948-1949.

[fol. 1580] Q. Did you hear any discussions concerning the American Committee for the Protection of Foreign Born in the Executive Board meetings, along about the same time?

A. Yes.

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Q. Now, before you do that, let me ask you this: Who was the Chairman and presiding officer of the District Exec-[fol. 1581] utive Board during the period that we are going to specify later?

A. Henry Huff.

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By Mr. Maddrix:

Q. What period was this we are speaking of, Mrs. Hartle?

A. 1948 and 1949.

Q. Were you a member of the District Executive Board during this period?

A. Yes.

Q. And was it during formal meetings of the District Board that there was a discussion of the American Committee for the Protection of Foreign Born?

A. Yes.

Q. Now, tell us what the discussion was.

A. The discussions were that there was a need for a local branch of the American Committee for the Protection of Foreign Born; that Communist Party members were being charged by the Immigration Department and threatened

[fol. 1582] with deportation, and that they would need defense. The Communist Party felt there was a need of an organization to give such defense and that that field was being covered by the American Committee, on a national scale, and that there should be a local organization of it to carry on the work there.

Q. Now, beside the need that you have spoken of, was there anything else discussed in the Executive Board meetings concerning the need for this local organization to be connected with the American Committee?

A. Yes.

Q. What was that?

* * * * * * *

[fol. 1583] The Witness: It was suggested also there was a need for such a branch of the American Committee in order to attract the support of a certain sector of the population to the Communist Party line who were interested in the problems of foreign born persons.

By Mr. Maddrix:

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Q. Now, Mrs. Hartle, was there organized a local committee to take care of this problem dealing with aliens subjected to deportation measures by the immigration department, if you know?

* * * * * * *

[fol. 1584] The Witness: Yes, such a committee was organized.

By Mr. Maddrix:

Q. About when was that, Mrs. Hartle, to the best of your recollection?

A. 1948.

Q. Do you know the name of the organization?

A. Yes.

Q. What was the name of it?

A. The Northwest Committee for the Protection of Foreign Born.

Q. Where was that headquartered, if you know?

A. In Seattle.

Q. Do you know whether or not that same organization subsequently changed its name?

A. Yes.

Q. Do you recall about when that was?

A. I heard of the change in name in 1954.

[fol. 1585] Q. All you know about it is, you just heard that the name had changed. Is that right?

A. In 1954 I was told by Marion Kinney, an officer of that organization, that its name had been changed and was now known by another name.

* * * * * * *

[fol. 1586] The Witness: The discussion in the District Committee followed the same line as that of the District Board, with the addition that there were more detailed reports of activities of the Northwest Committee from persons in charge of certain phases of work, and more acquainted with the affairs and activities of the Northwest Committee in detail.

By Mr. Maddrix:

Q. Did you know a person by the name of Marion Kinney?

A. Yes.

Q. K-i-n-n-e-y, is that how you spell it, Mrs. Hartle?

A. That is right.

Q. Do you know whether or not she was a member of the Communist Party in Seattle?

A. Yes.

[fol. 1587] Q. How do you know it?

A. I knew it from attendance at many Communist Party meetings with her; from discussions with her about the Communist Party: from carrying on activities of the Communist Party with her; from being a member of the District Committee of the Northwest District of the Communist Party with her.

Q. Now, I will have to ask you this question: Was she or was she not a member of the District Committee?

A. Yes, she was.

Q. And you did sit in District Committee meetings with her?

A. Yes.

Q. Do you know about what period she was a member of the District Committee?

A. From about 1945 to 1948.

Q. Now, do you know whether or not she was connected with this Northwest Committee for the Protection of the Foreign Born?

A. Yes.

Q. In what capacity?

Mr. Forer: Just a moment. I object to any testimony concerning the Northwest Committee for the Protection of Foreign Born on the grounds that that is irrelevant to the issues in this proceeding.

Mr. Morrissey: Objection will be overruled.

[fol. 1588] By Mr. Maddrix:

Q. In what capacity did she function?

A. She was Secretary of the Northwest Committee.

Q. Do you know how she became Secretary of the Northwest Committee?

A. She was assigned by the Communist Party to carry on the work in the Northwest Committee, and to accept the office of Secretary, in order to better be able to carry on that work.

• • • • • • •

[fol. 1589] Q. Do you know whether or not the Communist Party in Seattle circulated any literature for the American Committee for the Protection of Foreign Born?

A. Yes.

Q. How do you know that?

A. Literature and pamphlets of the American Committee for the Protection of Foreign Born were circulated through the Communist Party literature apparatus, in branches and clubs which I attended, and were circulated through the Frontier Book Store, which was the book store of the Communist Party in Seattle.

• • • • • • •

[fol. 1596] Q. Did you know a person by the name of Abner Green?

A. Yes.

Q. Do you see him here today?

A. Yes, I do.

Q. Where is he sitting, please?

A. He is sitting beside the gentleman in the gray suit.

Q. Are you speaking of the trial attorney for the American Committee for the Protection of the Foreign Born, when you refer to the man in the gray suit?

[fol. 1597] A. Yes.

* * * * * * *

[fol. 1599] Q. Did you all sit at one table or did you sit at more than one table?

A. We sat at one table.

Q. Did Mr. Green have anything to say during this luncheon period?

A. Yes.

Q. What did he talk about?

A. He talked with Mr. Huff about the work of the American Committee, and of the Northwest Committee, its progress in the Seattle area.

Q. What did he say about the Northwest Committee, at that time?

A. He said he was satisfied with the progress of the Northwest Committee and was pleased with the response at meetings and conferences that were being held around his visit, there.

Q. Now, let me ask you this: Do you know whether or not Mr. Abner Green met with any high functionaries of the Communist Party in the Seattle area at any other time—and I will set the time—any time between 1948 and 1950?

Mr. Forer: I object on the grounds that it is irrelevant.

[fol. 1600] Mr. Morrissey: Objection is overruled.

The Witness: Yes.

By Mr. Maddrix:

Q. Who did he meet with, if you know?

A. He met with Henry Huff.

Q. How do you know this?

A. Henry Huff reported in a meeting of the District Board of the Northwest District that he had met with Abner Green and Marion Kinney on the occasion of a visit that Mr. Green made to the Seattle District as national head of The American Committee for the Protection of the Foreign Born.

Mr. Forer: I move to strike the answer on the grounds that it is obviously hearsay.

Mr. Morrissey: Motion to strike will be denied.

By Mr. Maddrix:

Q. Mrs. Hartle, do you know whether or not the Communist Party in Seattle supported in any way the Northwest Committee for the Protection of the Foreign Born?

A. Yes.

Q. How did they support it?

Mr. Forer: Wait just a moment—never mind.

The Witness: The Communist Party supported the Northwest Committee by circulating material it issued, through its members, and through its members to the public. Distribution of material issued by the Northwest Committee.

[fol. 1601] The Communist Party also circulated and sold tickets for affairs that were issued by the Northwest Committee.

By Mr. Maddrix:

Q. Do you know whether or not the Northwest Committee took any position in reference to the so-called Smith Act?

A. Yes.

Q. What position did it take?

A. It took the position of opposing the Smith Act.

Q. Now, from your knowledge of the functions of the Communist Party in the northwest, do you know what relationship, if any, existed between the Northwest Committee for the Protection of the Foreign Born, and the American Committee for the Protection of the Foreign Born?

Mr. Forer: I object. There has been no foundation laid and it also calls for a pure conclusion of the witness.

Mr. Morrissey: Objection will be overruled. She may answer.

The Witness: The relation of the Northwest Committee to the American Committee was that it was a chapter of the American Committee.

Mr. Maddrix: Your witness.

Mr. Morrissey: You may cross-examine, Mr. Forer.

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[fol. 1709] September 8, 1955

Cross examination (resumed).

By Mr. Forer:

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[fol. 1736] By Mr. Forer:

Q. When you said Marion Kinney was assigned by the Communist Party to accept the office of secretary in the Northwest Committee, when was that?

A. As I recall, it was sometime in 1949.

Q. Do you remember when in 1949?

A. My best recollection is that it was about a year before I left Seattle, which would make it about the middle of 1949.

Q. But the Northwest Committee, you told us, was organized in 1948?

A. Yes, that is my recollection.

• • • • • • •

[fol. 1738] Q. You have told us that Marion Kinney was secretary of this organization in 1949. Now, will you please tell us what you mean by "secretary"?

A. I meant that the organization had a chairman and other officers, and a secretary, and the secretary's job was that of putting out correspondence, calling meetings, and doing the work that a secretary does in an organization, usually.

Q. But she was not executive secretary?

A. No.

Q. Was there an executive secretary, in 1949, when Marion Kinney was secretary?

A. I don't remember.

• • • • • • •

[fol. 2338] October 4, 1955

MARION MILLER, called as a witness by and on behalf of the Petitioner, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Maddrix:

• • • • • • •

[fol. 2340] Q. Have you heard of an organization called the Los Angeles Committee for Protection of Foreign Born?

A. Yes.

Q. When did you first hear of that?

A. It was in October, 1950.

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[fol. 2341] Q. What were the circumstances surrounding the fact that you had heard of the existence of this organization?

A. Through the mails. I received a letter from this Committee inviting me to attend a conference in Los Angeles.

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[fol. 2342] Q. And did you attend this particular conference?

A. Yes, I did.

Q. Do you know where it was held?

A. I believe it was the Parkview Manor at—I am not [fol. 2343] sure of the exact number—about 2200 West 7th Street in Los Angeles. It is no longer in existence, this place, but it is on West 7th Street, near Alvarado.

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[fol. 2373] October 5, 1955

Mr. Morrissey: Proceed, Mr. Maddrix.

Mr. Maddrix: Now, Mr. Chairman, I would like to call your attention to Petitioner's Exhibit 54, which has already been admitted in evidence. On page 2 thereof, there is a heading, a subheading, "Affiliations," and I am reading now:

"The Committee shall be affiliated to the national organization known as the American Committee for Protection of Foreign Born for purposes of mutual support, exchange of information and coordination of activities pertinent to the committee's aims."

By Mr. Maddrix:

Q. Now, let's return to this October meeting which you attended, Mrs. Miller. I think you testified yesterday that it was held at the Parkview Manor; is that correct?

A. Yes.

Q. You have previously mentioned here the name Delphine Smith. Did you see her at the conference?

A. I happened to sit next to her at the conference.

Q. Did you have a conversation with her?

A. Yes. We became quite friendly.

Q. Tell us what that conversation was.

Mr. Forer: I object, Mr. Chairman, because it is complete hearsay.

Mr. Morrissey: The objection will be overruled.

. . . . . .

[fol. 2373a] The Witness: During the conference, Delphine Smith spoke to me and noticing my interest in the Committee work invited me to participate and to become active. She asked if I would come down to the office sometime to help her with her technical work. She had little or no help in the office. I agreed to do this.

. . . . . .

[fol. 2374] Q. Mrs. Miller, I ask you whether or not Delphine Smith made a speech at that conference.

A. Yes, she did.

Q. What did she say?

Mr. Forer: I object. It is hearsay.

Mr. Morrissey: Objection overruled. You may answer.

The Witness: I don't remember everything she said, but I do recall one or two things which rather surprised me at the time. She mentioned, for example, a Henry Steinberg, who had a recent victory and said that it was a feather in the cap of the Communist Party.

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[fol. 2375] Q. Was Abner Green present at the time?

A. Yes, he was.

Q. Now, do you know whether he made a speech or not?

A. Yes, he did.

• • • • • • • •

[fol. 2377] Q. Do you recall what Mr. Green spoke about at this particular conference?

A. Mr. Green spoke very nicely at this conference, and very effectively explained these provisions of the McCarran-Wood law and how it affected the present deportees of Los Angeles, of the Los Angeles Committee for Protection of Foreign Born and he elaborated on each one of these provisions.

Q. You mean the provisions found in this exhibit 57?

A. Yes.

• • • • • • • •

[fol. 2379] Q. Do you know a man by the name of Frank Carlson?

A. Yes.

Q. Did you see him in this particular conference?

A. Yes.

Q. Did he stand up and make a speech or talk or say anything at the conference?

A. He was introduced as a leader of the Communist Party and on behalf of the Communist Party contributed fifty dollars ($50.00) toward the organization, the reorganization of the L.A. Committee for Protection of Foreign Born.

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[fol. 2395] Q. Can you tell us or explain how the Los Angeles Committee prepared its leaflets or throw-aways or propaganda material?

. . . . . .

[fol. 2397] The Witness: I will start again. When Delphine Smith was Executive Secretary she had no writers to help her prepare leaflets or pamphlets. She had to do all her own correspondence. Therefore, she was almost entirely dependent upon literature from the National Committee for the Protection of Foreign Born. This was mailed to her upon request and distributed at meetings.

Later, as some help was available, I observed that portions of the literature sent in by the National Committee were used, and rewritten in the writer's own vocabulary and some were left entirely intact.

[fol. 2398] In other words, the literature distributed by the Los Angeles Committee was really based upon the literature of the National Committee and still later, I would say in 1954 and 1955, as the funds of the Los Angeles Committee were more and more abundant, writers from Los Angeles were able to carry on and write their own pamphlets and they were not dependent upon the American Committee for literature.

Q. Do you know whether this material that you just described was or not sent to the American Committee in New York?

A. At Mr. Green's request, all literature, leaflets, throw-aways, that were printed in Los Angeles, were to be sent to the National Committee. He wanted to be kept informed at all times as to what was being done in Los Angeles. Also, as to any—I am afraid I am going on something else. Any change of deportees' status or addresses.

. . . . . .

[fol. 2401] Mr. Morrissey: The objection will be overruled. Petitioner's Exhibit No. 59 will be received in evidence.

(Petitioner's Exhibit No. 59 for identification was received in evidence.)

Q. Mrs. Miller, I notice here that at the beginning of the minutes, there is the following sentence: "Under Plan for Action Delphine Smith presented first the plans for Delegations: Communist Party delegation to Landon protesting Carlson's arrest and detention; I.P.P. delegation asking release of the four; the Peace Force, all four; UOPWA for David Hyun, A.S.P. for Harry Carlisle and a delegation of women for Merrium Stevenson."

You took these minutes, did you?

A. Yes, I did and they were always checked by the Chairman before they were mimeographed and mailed out.

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[fol. 2403] **Mr. Maddrix: Let's see if the witness understands the question, and can explain what Delphine Smith said at the particular meeting which is embodied in these minutes; which she took.**

* * * * * * *

Q. What was stated at that time by Delphine Smith in reference to the subject matter we are talking about?

A. Dorothy Smith reported that certain delegations had been set up in order to protest the arrest of the Terminal Island Four, as these people were called. The Communist Party were to protest for Frank Carlson; and the UOPWA for David Hyun. In other words, different organizations were set up to protest for a different one of the Terminal Island Four.

Q. What we are trying to establish was, whose plan was [fol. 2404] **this, that these organizations—various organizations—were to make the protest?**

A. She reported that she had set these delegations up. They had been set up.

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[fol. 2421] **Q. Can you tell us how often Mr. Green did visit the Los Angeles Committee during your association with it, approximately?**

A. About five times.

* * * * * * *

[fol. 2428] By Mr. Maddrix:

Q. Now, Mrs. Miller, I see here in the minutes which you took of the Executive Board meeting of January 16, 1951, the following: "Delphine Smith gave a thorough report of [fol. 2429] the organization plans that were discussed when Abner Green visited Los Angeles and, also, action that has been suggested for the immediate future. There will no longer be an Executive Board which meets regularly every two weeks, but in its place will be an action group consisting of the same members which will be called to special sessions when the Executive Secretary deems necessary."

Then there were other changes, suggested changes in this particular paragraph of the minutes which I call your attention to. Now, my question is did Delphine Smith, in making this report, say that the reorganization plans had been discussed with Abner Green or is that the conclusion which you placed upon it in writing up these minutes?

A. Delphine Smith said that that had been the result of her interviews and conferences with Abner Green when he was in Los Angeles.

Q. Now, do you recall a mass meeting of the Committee at the Embassy Auditorium in January, 1951?

A. Yes, I do.

Q. Do you know whether Mr. Green, Abner Green, was present?

A. He was the featured speaker. It was in his honor, yes.

Q. When were you first introduced to Mr. Green?

[fol. 2430] A. It was after this meeting that Delphine Smith introduced me to Mr. Green for the first time.

Q. When you say "after," that doesn't convey to us any preciseness of time.

A. It was at the hall, immediately following the program, that Delphine asked me to come down and meet Mr. Green personally.

Q. And did you meet Mr. Green personally at that time?

A. Yes. I was introduced to him then for the first time.

* * * * * * *

Q. Now, did Mr. Green have anything to say at this particular meeting we are talking about?

A. Yes.

Q. Tell us, if you can recall, what the subject matter was of which he was speaking.

A. I can't remember everything he said, but I recall particularly his saying that the American people had no right to expect justice through the courts, through the legal means and if they wanted justice they would have to get [fol. 2431] the people to be aroused and make the courts know what their feelings were, because all those who were most interested in the deportation cases were in the pay of the Attorney General; the Immigration Officers, the judges, the clerical workers.

Q. All right, and anything else?

A. That was about the gist of the speech, as I recall. He did, again, go into the legal aspects of the McCarran law and how it affected the deportees in Los Angeles and their status as of that time.

* * * * * * *

[fol. 2447] Q. Can you recall any meeting with her at which time there was a discussion whether or not she was a member of any other organization, except the Los Angeles Committee?

A. Yes, I can.

Q. All right, tell us about it.

Mr. Forer: I object, sir. It is irrelevant.

Mr. Morrissey: The objection will be overruled.

The Witness: Shortly after this meeting at which Delphine Smith officially resigned from the Committee, she asked me to come down and have lunch with her. She was still in the office helping the new force take over. I did. I came down to work that day and we had lunch. She had a couple of drinks—I don't drink myself—

By Mr. Maddrix:

Q. Now, when you say "drinks," let's qualify that a little more.

A. Well, she had a couple cocktails and she became quite talkative and at this time she told me, confided in me that she was a member of the Communist Party, and she also told me that she was being sent to San Francisco for a trial

period of ten days to help set up the Northern California Committee for Protection of Foreign Born.

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[fol. 2955] October 13, 1955

CLARK M. HARPER was called as a witness by the Petitioner and, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Maddrix:

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[fol. 2956] Q. Were you ever a member of the Communist Party?

A. Yes, I was.

Q. When did you become a member?

A. I became a member in the fall of 1943.

Q. Did you become active at the beginning of your membership?

A. No, I did not.

Q. When did you become active, if at all?

A. In the fall of 1944.

• • • • • • • •

[fol. 2958] A. In the meantime, in 1947, I was placed on the District Committee of the Northwest District of the Communist Party and I was on that officially up until December of 1950.

• • • • • • • •

[fol. 2976] By Mr. Maddrix:

Q. Mr. Harper, let me restate the question once more. Do you recall any discussion at any district committee meetings concerning the setting up of an organization to defend the rights of foreign born?

Mr. Forer: Objection on the ground stated.

Mr. Morrissey: Overruled.

The Witness: Yes, I do.

By Mr. Maddrix:

Q. All right, fix the time, first and then answer the question.

. . . . . .

[fol. 2977] The Witness: To set the time, it is a little hard for me to set the exact time on these things. It is quite a ways back but it was in the latter part of 1948 or probably the first part of 1949. That is really about as close as I can come. The first time I heard about these committees for the Protection of Foreign Born that I could recall was in a committee meeting we had, Henry Huff made a speech at this committee meeting stating the need for another organization to protect our foreign born comrades and he made quite a speech about it, about the need for it and that we should have an organization such as that. It would help build the Party and there was a mass organization—it was the job of the Communist Party to set up this organization to work on this. Well, there was quite a bit of discussion about it.

Mr. Huff spoke at length about setting up a branch of this organization for the protection of foreign born.

[fol. 2978] Q. You said, I believe, that among some of the things that Mr. Huff stated, was the need to set up another organization. Now am I correct in that?

A. Well, yes, you are correct.

. . . . . .

Q. Did Mr. Huff say anything about any organization which was in existence that had for its objective the protection of foreign born?

A. If I may explain myself a little clearer on this question: I may have formulated the wrong opinion—but he said that there was already an organization of the kind and we needed a branch in Seattle, Washington and that is what he was talking about.

Q. Did he mention the name of this organization which was already in being?

A. Yes, he mentioned the name of the American Com-[fol. 2979] mittee for the Protection of Foreign Born.

Q. And said they needed a branch?

A. And that we needed to set up a branch in Seattle, around that area.

Q. Now, let's look a little more closely at this meeting at the suggestion of the Chairman and see if we can put some people present. Do you recall—

Mr. Forer: Just a minute. Excuse me, Mr. Maddrix. I think probably this would be an appropriate time now for me to make my motion to strike the witness' testimony dealing with what Henry Huff and the others said at this meeting. I do so on the grounds that it is hearsay and not binding on the Respondent and remote and inherently unreliable.

Mr. Morrissey: The motion is denied.

By Mr. Maddrix:

Q. Do you recall who was present?

A. Well, I can recall some of the people that were present. Of course, as I mentioned, Henry Huff, Clayton Van Lydegraf, Terry Pettus, Marion Kinney, Clark Harper, myself.

Q. You mentioned Marion Kinney as being present. Do you know whether there was any other lady present or not?

A. Yes, as I recall, I believe Mrs. Barbara Hartle and there was some people from Tacoma whose names I cannot recall right this minute that were there.

[fol. 2980] There were others but I cannot really recall right now.

* * * * * * *

The Witness: Well, among the other things that Mr. Henry Huff said about this organization, he also said that the District Board met and had suggested that Marion Kinney, who had headed this organization, organization it.

Q. Do you know whether or not Marion Kinney did head it, the new organization?

A. Yes, I do.

Q. What office did she hold in it?

A. Well, at that time she—well she organized it and was holding these—I do not recall—I think it was executive secretary.

Q. Do you know when this was actually officially organized?

A. Yes, in 1949. The middle part of 1949.

Q. Do you know what name was given it?

A. Yes, Northwest Committee for Protection of the For-
[fol. 2981] eign Born.

* * * * * * *

Q. Now, Mr. Harper, before Marion Kenney actually began to organize this new organization was there any other meeting which you attended where there was a discussion of the new organization and specifically as to Marion Kenney being its head?

A. Yes, there was.

Q. Tell us about that.

Mr. Forer: I object, Mr. Chairman, for the reasons stated in connection with the question as to the previous construction.

Mr. Morrissey: Overruled.

By Mr. Maddrix:

Q. Before you answer my question, about how long was this after the meeting you just described?

[fol. 2982] A. Approximately a week later.

Q. What type of a meeting was this?

A. This was called a staff meeting in the office of the Communist Party.

Q. What do you mean by a staff meeting?

A. Well, a staff meeting is a meeting of several of the officers of the Northwest District of the Communist Party.

Q. Now, tell us what went on at this meeting concerning the question I originally directed your attention to.

Mr. Forer: I object on the grounds stated.

Mr. Morrissey: Objection overruled.

Read the question for the witness.

(The pending question was read by the Reporter.)

Mr. Morrissey: Do you understand the question?

The Witness: Yes, I do. Well, what went on at that meeting is that this Marion Kenney was there to get in-

structions and to ask how to go about organizing this Northwest Committee for Protection of the Foreign Born and discuss it with the officers of the Communist Party at this Communist Party staff meeting.

By Mr. Maddrix:

Q. And who was present at this meeting?

A. Henry Huff, Clayton Lydegraf, Terry Pettus and myself.

Q. Was Marion Kenney present?

[fols. 2983-2984] A. And Marion Kenney was present. Huff told her that she should bring in, should get someone else to take over some of her duties in the Communist Party to take care of organizing our new organization, which is this Committee for the Protection of the Foreign Born and that she should get all of the members of the Communist Party that were foreign born, what they call deportees, into this organization to start getting the officers and getting the organization on its way.

Q. Can you tell us whether or not prior to or after the organization got started, whether or not Marion Kenney made periodical reports to any meetings, Communist party meeting, I mean, which you attended.

Mr. Forer: Object on the ground that it is irrelevant and incompetent.

Mr. Morrissey: The objection is overruled. You may answer it.

The Witness: Yes, she did.

By Mr. Maddrix:

Q. Well, without going into the detail of what these reports were, we would like to have you fix the time as closely as you can and about how many meetings.

A. Well, I could not say exactly how many meetings but there were several meetings that Marion Kenney attended, and made reports on her progress of this new organization.

[fol. 2985] Q. Let me ask you this: Was there a regional committee of the Central Region which you organized, which you were an organizer?

A. Yes.

Q. And I think you told us awhile ago who composed that committee, did you?

A. Yes.

Q. If you did not, you may do so now.

A. Well, I think I told you.

Q. Just tell us again to be sure.

A. It was composed of the organizer of the regional committee, which was myself, I was chairman of this regional committee. It was composed of the chairmen of various clubs and some secretaries.

Q. Yes, you did tell us that. That refreshes my recollection. Now, was Marion Kenney a member of the Regional Committee during that time that you were organizer?

A. Yes, sir.

Mr. Forer: Objection as immaterial.

Mr. Morrissey: Overruled.

The Witness: Yes, she was.

By Mr. Maddrix:

Q. Can you tell us whether or not she made reports to the Central Regional Committee during the time that you were organizer?

[fol. 2986] A. Yes, she did.

Q. And what would these reports be in reference to?

Mr. Forer: I object. It is hearsay and it is irrelevant.

Mr. Morrissey: Overruled. You may answer.

The Witness: The reports were about the progress of the Northwest Committee for the Protection of Foreign Born and also telling about the members and asking in the Regional Committee for all of the members of the clubs to help to support and to build the committee for the Protection of Foreign Born.

Q. Were you, yourself active in the activities of the Northwest Committee?

A. No, I was not active in the committee as such, no.

Q. What did you do, what duties, if any, did you have which concerned the activities of the Northwest Committee for the Protection of Foreign Born?

A. Well, my duties all stemmed from—well, they were, rather, to see that the Communist Party members supported this organization, the committee for the Protection

of Foreign Born and that they joined this organization, those that were connected or that were deportees and supported all of the fund-raising affairs, meetings and so forth of the Northwest Committee for the Protection of Foreign Born.

Q. Did Marion Kenney at any time consult you concern-
[fol. 2987] ing her duties, her Communist Party duties in reference to her activity with the Northwest Committee for the Protection of Foreign Born?

A. Yes, she did.

Q. Tell us when it was and what was said.

Mr. Forer: I object, Mr. Chairman. This is complete hearsay.

Mr. Morrissey: The objection is overruled. You may answer.

The Witness: Well, of course, there were various times when she consulted me about the committee but in one particular time, if I should go any further—I mean if you want any particular time or what it was about, I can tell you about it in 1951.

Q. Well, 1951 is the year I have reference to?

A. Well, in 1951, around the latter part of 1951 is when Marion Kenney asked me could she be relieved of some more duties which she had in the Communist Party to do more work in the committee for the protection of foreign born.

Q. And as a result of her inquiry as to whether or not she could be relieved of some more of her Communist Party duties in order to devote more time to the Northwest Committee for Protection of Foreign Born, what, if anything did you do?

A. Well, I consulted a person that was the liaison between myself and the district committee.

. . . . . .

[fol. 2988] Q. As a result of her discussion with you, what did you, if anything, report to Marion Kenney?

A. I told her that it was perfectly all right, that she could [fol. 2989] be released, she could be relieved of some of her duties in the Party, the Party Club in order to have more

time to work in the Committee for the Protection of Foreign Born.

* * * * * * *

[fol. 2990] Q. Have you ever seen a man before whose name was Abner Green?

A. Yes, I have.

Q. And do you see Mr. Green present here today?

A. Yes, I do see Mr. Green.

Q. Will you point him out, please?

A. Next to the wall, over there.

Q. Sitting next to Mr. Forer?

[fol. 2991] A. Next to this gentleman here.

Q. Do you know whether or not he was in Seattle in 1952?

A. To my knowledge, he was.

Q. Tell us about the occasion, if you can recall it, and what Mr. Green did.

A. Well, as I recall, in the early part of 1952—I believe it was in March, there was a meeting at the Washington Hall in the City of Seattle where Mr. Green spoke.

Q. Who sponsored this meeting?

A. I believe it was the Committee for the Protection of Foreign Born. No—let, us see, I do not recall just who sponsored it. It was so mixed up at the time. I do not recall who sponsored that meeting.

Q. To the best of your recollection—well, by the way did Mr. Green make a speech at this particular meeting?

A. Yes, he made a speech there.

Q. I do not want you to detail his speech, but tell us some of the things which he said at this particular time.

A. Well, in particular that I remember is that is the time that he said that he had been in jail with Mr. Jack Stachel and how proud he was to be with him in prison and he also gave instructions of what to do in case the Immigration authorities would come around to any member or anyone, [fol. 2992] not to give them any information or to talk to them. I do remember that, in particular.

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[fol. 2996] Cross examination.

By Mr. Forer:

* * * * * * *

[fol. 3122] October 14, 1955

Q. Now you testified that Marion Kenney made some reports at several meetings concerning the progress she had made in organizing this committee for the protection of foreign born. Do you remember that?

[fol. 3123] A. Yes, I do.

Q. Now, these were meetings of what group within the Communist Party?

A. The District Committee meeting and also regional committee meetings.

Q. District Committee and regional committee. And you were at these meetings, were you?

A. The meetings that I speak about, that I remember her being there, I was there, yes.

Q. Now, how many district committee meetings did she make these reports at?

A. After this you mean?

Q. Well, you told us about the first one?

A. Yes.

Q. Well, she did not make a report at the first one on her progress?

A. Right.

Q. I am talking now about reports about her progress in organizing.

A. In district meetings you are speaking of?

Q. Yes, just take the district meeting.

A. I am sure it was two. I do not know how many more.

Q. You remember two?

A. Yes.

Q. Do you remember when these two occurred?

[fol. 3124] A. No, it was sometime after that.

Q. Sometime after that staff meeting?

A. Yes.

Q. Do you remember how long after the staff meeting?

A. Oh, I do not know, probably—I do not know whether it was a month or a month and a half.

Q. When you say a month or a month and a half, did the latest one of these district meetings, district committee meetings at which she reported occur within a month or a month and a half of the staff meeting or the first one of them, or what?

A. That she reported?

Q. Yes.

A. She reported at the very next district committee meeting.

Q. That was the first one you remember?

A. Yes.

Q. That must have occurred maybe a month or so later, at the district committee meeting you have told us about, correct?

A. Yes.

Q. So, presumably that occurred early in 1949?

A. Yes.

Q. Then she reported at still another District Committee meeting, is that right?

[fol. 3125] A. Yes.

* * * * * * *

[fol. 3126] Q. About how many regional committee meetings did she make these reports at?

A. Two or three or probably more. I cannot tell you just how many because she reported a number of times at the regional committee meetings and also in club meetings.

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[fol. 3958]

BEFORE THE LOYALTY CONTROL BOARD

HERBERT BROWNELL, JR., Attorney General of the United States, Petitioner,

v.

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, Respondent.

Courtroom 110
United States Court House
Foley Square
New York, New York
Tuesday, December 20, 1955

The above-entitled matter came on for further hearing, pursuant to recess, at 10:00 o'clock a.m.

Before: Edward M. Morrissey, Hearing Examiner.

Appearances:

(As heretofore noted)

* * * * * * *

[fol. 3960] LOUISE PETTIBONE SMITH, having been called as a witness on behalf of the respondent, and having been first duly sworn by Mr. Morrissey, testified as follows:

Direct examination.

By Mr. Forer:

[fol. 3961] Q. You are Louise Pettibone Smith?

A. Yes, sir.

Q. Where do you live, Professor Smith?

A. Winchester Center, Connecticut. It is near the center of Litchfield County, in the hills.

Q. Do you hold any position with the American Committee for Protection of Foreign Born?

A. I am Honorary Co-Chairman.

Q. You are Honorary Co-Chairman?

A. Yes.

Q. Is that a position to which you were elected?

A. Yes, I was elected at the last conference about two weeks ago.

Q. Where was that conference held?

A. In Detroit.

Q. Were other officers elected at that conference in Detroit about two weeks ago?

A. There are two other Co-Chairmen: Bishop Molton of Utah and Father Kenneth Ripley-Forbes, Philadelphia.

Q. Did you say they were Co-Chairmen, or Honorary Co-Chairmen?

A. Honorary Co-Chairmen, with me.

Q. Now, at that conference in Detroit was there also elected an Executive Secretary of the American Committee for Protection of Foreign Born?

[fol. 3962] A. Yes, Abner Green was elected Executive Secretary.

Q. What is your occupation, Professor Smith?

A. I am Professor of Biblical History, Literature and Interpretation, Emeritus, of Wellesley College.

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[fol. 3978] Q. You have already told us that you are—you now hold the position of Honorary Chairman with the American Committee for Protection of Foreign Born, Honorary Chairman.

[fol. 3979] Will you tell us when you first established a formal connection with the American Committee for Protection of Foreign Born?

A. I think it was 1950. I got a letter—

Q. Well, just hold on—

The Witness: Yes.

Q. —you say you think it was in or about 1950?

A. Yes.

Q. And at that time did you assume a position or title with the American Committee for the Protection of Foreign Born? I mean, just answer yes or no.

A. I was asked to be a sponsor, and I accepted.

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[fol. 3995] Q. Professor Smith, in the year 1951, did you attend any national conferences of the American Committee for Protection of Foreign Born?

A. Yes. The conference was in Chicago that year, I think.

Q. Was that the annual national conference of the Committee—

A. That was the annual national conference. I had to be in Chicago—

Q. Well, just a moment.

The Witness: Yes.

Q. Do you remember when in 1951 that conference was held?

A. In December.

Q. In December of 1951?

A. Yes.

Q. Now, when did you—strike that.

How did you first learn that this conference was going to be held in December 1951?

A. It's always been the policy of the Committee to send [fol. 3996] to the sponsors notices of important meetings and notices of publications, various things, and I got the notice of the conference at Chicago with the date because I was on the sponsor list.

Q. Now, how did you come to attend that conference?

A. I had to be in Chicago in any case during the part of the Christmas vacation to consult with one of the professors in Chicago about a book we were working at, and since I had to go anyway, I thought I would like to see what the annual conference was like.

I wanted to know what I was sponsoring in more detail than I did know.

Q. Was this the first conference of the American Committee that you attended?

A. Yes, it was.

Q. For how many days did that conference last?

A. It was Saturday and Sunday, I think, and I think there was perhaps a meeting or two of smaller groups before it or after it, but that I don't know.

Q. Now—but, the conference itself was a two-day conference of Saturday and Sunday?

A. Yes, sir.

Q. Did you attend the conference both days?
A. Yes, I did.

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[fol. 4000] Q. Now, were officers elected at this conference?
A. Yes, they were.
Q. And these were officers who were to serve for the—
A. Ensuing year.
[fol. 4001] Q. —ensuing year? What officers were elected and to what positions?
A. They had asked me, after they knew I was going to be at the Conference, if I would accept the office of Honorary —of Co-Chairman, and I did accept it. There were elected at the Conference the Honorary Chairman, Bishop Moulton of Utah; the Co-Chairman George Murphy and myself and Abner Green as Executive Secretary.

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[fol. 4004] Q. This position of yours as Chairman, was that a salaried position?
A. It certainly was not.
Q. What about your position as a sponsor, was that a salaried position?
A. No, definitely not.
Q. Well now, have you received any salary or pay for any position that you have held in the American Committee for Protection of Foreign Born?
A. I have not.

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[fol. 4019] Q. Now, were officers elected at this December 1952 Conference in Detroit for the ensuing year?
A. Yes.
Q. Who elected these officers?
A. The delegates.
Q. You mean the 300 or so delegates of 190 or so organi-
[fol. 4020] zations?
A. Yes.
Q. They elected the officers?
A. Yes.
Q. Who were the officers who were elected?
A. Bishop Moulton was re-elected as Honorary Chairman and Mr. Murphy and myself as Co-Chairmen, Abner Green as Executive Secretary.

Q. Well, using this to refresh your recollection, do you remember whether or not a Treasurer was elected, also, at that meeting, at that Conference?

A. Charles Musil has acted as Treasurer. I have an idea—yes, that is so.

Mr. Knight: May I interrupt here a second, Mr. Chairman? In order to identify Mr. Murphy, perhaps the professor might remember Mr. Murphy's full name?

The Witness: George Murphy.

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[fol. 4177] December 21, 1955

Cross examination.

By Mr. Knight:

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[fol. 4179] Q. Yes. Well, you are national chairman, aren't you?

A. I am Chairman of the American Committee. There isn't any such thing as a national chairman.

Q. Well, you are Chairman of the—

A. I am Honorary Co-Chairman of the American Committee but that gives me no responsibility for local committees.

[fol. 4180] Q. Did anybody ask you if you had responsibility for local committees?

Mr. Forer: I object to that question as argumentative.

Mr. Morrissey: It may go out.

A. I haven't any responsibility anyhow.

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[fol. 4242] December 22, 1955

Q. Fine. Now, Professor, during the five-year period that you have been connected with the American Committee for Protection of Foreign Born, did you maintain a desk in the office of the American Committee for Protection of Foreign Born?

A. No, sir.

Q. Starting with the year 1951, can you recall how many times, if any, you visited the office of the American Com-
[fol. 4243] mittee for Protection of Foreign Born in New York?

A. No.

Q. Would you care to approximate it: twice, perhaps, three times?

A. Oftener.

Q. Oftener?

A. I should guess that it would be on an average of once a month or once in six weeks.

Q. You would go to New York and visit the office of the American Committee?

A. I always visited the office if I was in New York for any reason, and I was often in New York for reasons quite unconnected with the Committee. Then I also went down, if there was any special party or something of that sort that I thought it would be fun to go to.

Q. And to the best of your recollection, in 1951, that would be about every six weeks.

A. I should think so, from 1951, on.

* * * * * * *

[fol. 4288] Q. Professor Smith, on the occasion of your visits every four, five or six weeks to the office of the American Committee for Protection of Foreign Born, would you have an opportunity to observe the workings of the Committee, the daily day-to-day routine of the Committee?

A. Not the ordinary executive routine which is done by the secretary in the office. I never checked the day-to-day activities as they were carried on in the office. If something
[fol. 4289] was going on that was interesting when I appeared, we talked it over but I was in no sense a supervisor of the office activities.

Q. Well, who would you say was supervisor of the activities of the office?

A. We gave the general council—the general council formulated the policy of the year and handed over the carrying out of that policy to the Executive Secretary.

Q. Then the Executive Secretary, we might say, was actually in charge of the office in its day-to-day workings?

A. Yes. At least he was responsible for it. I don't know how much of it he did himself and how much he delegated.

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[fol. 4290] Q. Now, Professor, were you present in the office of the American Committee for Protection of Foreign Born at any time during the year 1951 for a full day? That is, from 9 o'clock until 5 or 5:30, whatever the office hours were?

A. No.

Q. You would visit then, you would drop in, is that true, to the office?

A. Yes.

Q. For about how long a time would you stay on the average visit?

A. An hour or so. I don't know how long.

Q. I imagine, I would assume you would talk to Mr. Green?

A. Yes, with anybody else in the office.

Q. Possibly with Miss Baron?

A. Yes.

Q. Or Miss Strange.

[fol. 4291] A. At no time when I personally was in the office did Miss Strange have a desk in the office. Her office was elsewhere but I have met here in the Committee meeting room, I think. I know, as I say, I lunched with her once.

Q. Your average day on these visits would approximate one hour, would that be a fair statement?

A. If you mean average, I suppose so because sometimes I just stopped in to pick up somebody to go to lunch, which would bring down the average, but I often sat down in the office for a long discussion that lasted for a couple of hours.

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[fol. 4349] Q. Now, Professor, going back to Detroit, Michigan, on December 14, 1952, were you in Detroit?

[fol. 4350] A. I have been in Detroit.

Q. Were you there on that date, December 14, 1952, if you remember?

A. That is the date of the Detroit annual—when the annual conference was in Detroit, isn't it?

Q. Is that your recollection?

A. Well, I have to get them—to count them out on my fingers to get them straight, but at the moment that is what I would think.

Q. Yes. You previously testified, Professor, that you met a man named Nat Ganley there in Detroit?

A. Yes.

Q. Do you recall if Nat Ganley addressed an open meeting there in Detroit of the American Committee or Michigan Committee for Protection of Foreign Born?

A. His wife was a deportee and he did speak at such a meeting.

Q. Do you recall what he said?

A. Some of it,

Q. Would you tell us what you recall?

A. He told us that he was under indictment under the Smith Act, that his wife was under deportation sentence. That they had a young daughter who might therefore be obliged to choose between leaving the country of her birth to go with her mother or remaining in this country where [fol. 4351] she could see her father in prison on occasion. He told us of what he had learned as a boy in the American public schools, that America was the land of equal opportunity and freedom, that in America one could think out one's problems, discuss them without fear, things of that sort. It was one of the most moving descriptions of what I have always supposed was the American ideal of freedom that I have ever happened to listen to. My throat ached and I had trouble keeping back the tears and I don't often have that happen to me.

Q. Do you recall whether Nat Ganley said, I am a communist and I am proud to be a communist?

A. I think he did. Which made me wonder whether my opinion of the Communist Party was wrong.

Q. No, did you also speak that same evening, Professor?

A. Whether I spoke the same evening, I don't think so. I think I was presiding but I am not sure I spoke at that conference.

Q. As presiding officer wouldn't it be your duty to introduce the various speakers of the evening?

A. Yes, I probably did.

Q. Possibly make a few remarks about them?

A. Yes.

Q. Now, concerning Nat Ganley, did you say it is important at this time to keep in with the order of the day. Although I am not now or never have been a communist, [fol. 4352] America needs more loyal communists like Mr. Ganley. Did you say that, Professor?

A. I certainly said something very like that. I don't know whether those are exact words or not. I was tremendously impressed by Mr. Ganley's tribute to what he had learned of American freedom and I thought that America needed more people who understood freedom that way, whatever party label they happened to bear. I still think so.

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[fol. 4387]

BEFORE THE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 109-53

[Title omitted]

January 4, 1956

[fol. 4388] DR. ANTON JULIUS CARLSON, called as a witness by and on behalf of Respondent, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Forer:

Q. Will you state your name, please?

A. Anton Julius Carlson.

Q. Where do you live, Dr. Carlson?

A. 5228 Green Wood Avenue, Chicago 15, Illinois.

Q. And what is your occupation?

A. I have been an investigator and a teacher. I still am, to a certain extent, an investigator and teacher.

Q. An investigator and teacher? What sort of things do you investigate?

A. Well, I specialized in biology and medicine in my early years, and that is a very complicated field because it involves the past, the present environment and the nature of man and animals, foods—very complicated.

Q. Dr. Carlson, do you have any connection or position with the American Committee for the Protection of Foreign Born?

[fol. 4389] A. Yes. I have sponsored it for, I think, some ten years, or possibly more, in Chicago.

Q. I am just talking about the American Committee.

A. The American Committee, yes.

Q. And I understand that you are and have been for sometime a sponsor of the American Committee; is that right?

A. That is right.

Q. Now, do you also have any position or connection with the Mid-West Committee for the Protection of the Foreign Born?

A. Yes. I sponsored that and I have been Chairman and Co-Chairman of that Committee for—oh, since 1952, I think.

Q. So you have been a sponsor, Chairman and Co-Chairman of that organization?

A. Yes.

Q. What are you at present?

A. Co-Chairman.

Q. You are Co-Chairman?

A. As well as a sponsor.

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[fol. 4443] Cross examination.

By Mr. Knight:

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[fol. 4474] Q. Yes. Now, as a co-chairman, did you have the power to approve the appointment of Miss Heit as acting executive secretary of the Mid-West Committee?

A. I don't think so, so far as I knew the rules.

Q. You did not have the power to approve or disapprove of her taking office?

A. Not so far as I can recall.

Q. Do you know who did approve of Miss Heit?

A. I do not. I suppose the executive committee.

Q. But you don't know yourself?

A. No, I do not.

Q. You weren't a member of the executive committee yourself, were you, of the Mid-West Committee for the [fol. 4475] Protection of Foreign Born?

A. No.

* * * * * * *

[fol. 4476] Q. Yes. Now, in 1955, that is last year, Doctor, you were elected to the position of chairman or co-chairman.

A. Co-chairman, reelected.

Q. You were reelected. Were you present during that election?

A. No, I was not.

Q. Well, how were you notified that you were elected, Doctor?

A. By letter.

Q. Did you know that your name had been placed in nomination to be co-chairman?

A. I suppose my name was placed in nomination because my was elected co-chairman.

Q. You were elected co-chairman.

A. No, the other man that you referred to.

Q. No, I am referring to you, Doctor.

A. All right.

Q. You were not present in 1955?

[fol. 4477] A. No.

Q. In 1954 you also were either chairman or co-chairman?

A. Elected.

Q. Now, were you present in 1954?

A. I don't recall whether I was or not. I don't think I have been present at any of the meetings when I was elected an official.

Q. During the time that you have been connected with the Mid-West Committee, about how many meetings did you attend, Doctor?

A. I don't recall.

Q. Would you care to estimate for us?

A. No, I would make no estimation until I look up the record. I don't recall.

Q. Could you give us your best recollection; maybe three a year?

A. No, I could not do any guessing before a court.

Q. Well, would you say, Doctor—well, strike that.

Doctor, did you have an office in the offices of the Mid-West Committee?

A. No. My office is only at the University of Chicago.

Q. Did you have a desk there?

A. Where; at the University of Chicago?

Q. No, at the Mid-West Committee.

A. I did not.

[fol. 4478] Q. Well, about how many times a week or a month, Doctor, would you visit the office of the Mid-West Committee?

A. There was no regular visit by me to that Committee.

Q. No regular visit, sir?

A. No.

Q. Approximately how many times to your best recollection would you go?

A. I can't guess.

Q. By the way, what is the address of the Mid-West Committee for the Protection of Foreign Born in Chicago?

A. I don't remember. I have some stuff here giving the address, but I don't carry those. I have got more important things to carry.

Q. Now, Dr. Carlson, in 1953 you were elected co-chairman or chairman of the Mid-West Committee, weren't you?

A. I think I was elected Chairman in 1952 and Co-Chairman in 1953.

Q. In 1953?

A. I think so.

Q. In 1953 were you present when you were elected?

A. No, I was not present at any meeting when I was elected.

Q. That would include the year 1952 as well, Doctor?

A. I think so, as I recall.

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[fol. 4487] Q. All right. Now, you became chairman or co-chairman of the Mid-West Committee in 1952?

A. Chairman, I think, yes.

Q. Yes. Now, will you tell me how you became chairman or co-chairman of the Mid-West Committee in 1952? Can you recall how that came about?

A. No, I can't. I had no knowledge of it. I was just [fol. 4488] elected by the conference or executive committee; that was all. I think I was asked beforehand, will I accept the election if I am elected. That is all I can remember.

Q. Were there any letters written to you? Were you notified by mail?

A. I don't recall. If they were, they weren't important enough to carry on my mind as long as this.

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[fol. 4496] Q. Now, Doctor, can you recall for me, please, if you can, when the last time was that you visited the office of the Mid-West Committee for the Protection of Foreign Born?

A. I cannot.

Q. Doctor, let me ask you this, have you been in the Office of the Mid-West Committee within the last three or four or five months?

A. I don't think so; no.

Q. About how many times since you became co-chairman or chairman of the Mid-West Committee have you been actually in the office?

A. I don't recall.

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[fol. 4498] Q. I have not finished. Can you recall who served on the Executive Committee of the Mid-West Committee in 1952?

[fol. 4499] A. No, I cannot.

Q. Do you know who was treasurer in 1952?

A. I don't recall.

Q. Can you recall who served on the Executive Committee of the Mid-West Committee for Protection of Foreign Born in 1953?

A. I don't recall those names, no.

Q. In 1954?

A. I do not recall.

Q. Can you recall who the present members of the Mid-West Committee for Protection of Foreign Born are?

A. No, I am not sure.

Q. Doctor, pardon me; that question may not be clear. Can you recall who the members of the Executive Com-

mittee of the Mid-West Committee for Protection of Foreign Born were in 1955?

A. No, I do not recall.

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[fol. 4800] January 10, 1956

ABNER GREEN a witness on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct examination.

[fol. 4801] By Mr. Forer:

Q. You are Abner Green?

A. I am.

Q. And you are Executive Secretary of the American Committee for the Protection of Foreign Born, which is the Respondent in this proceeding; is that correct?

A. I am.

Q. Where do you live, Mr. Green?

A. New York City.

Q. When and where were you born?

A. I was born in New York City, Borough of Manhattan, April 15, 1913.

Q. And you are therefore a citizen of the United States by birth, is that correct?

A. Native born citizen of the United States.

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[fol. 4818] Q. Now, about how long were you in this Washington office of the American Committee for the Protection of Foreign Born?

A. It was some six months of 1941.

Q. I didn't quite hear you. Did you say some six months?

A. About six.

Q. About six months.

A. A few weeks more or less, but it was about six months.

Q. In 1941?

A. In 1941.

Q. And what happened after that, after you finished at Washington? Where did you go?

A. I returned to New York City.

Q. And did you resume or continue working for the American Committee for the Protection of Foreign Born?

A. Yes, I did.

Q. In what capacity?

A. I continued my title then of Educational and Legislative Director of the American Committee.

Q. Now, how long did you, or let me put it this way, until what date did you have the title of Educational and Legislative Director?

[fol. 4819] A. Until the end of December 1941.

Q. And what happened at the end of December 1941?

A. I was elected Executive Secretary of the American Committee.

Q. And have you been Executive Secretary of the American Committee ever since?

A. Yes, I have.

Q. Now, you say that you were elected Executive Secretary of the American Committee at the end of December 1941. Do you know the exact date that you were elected Executive Secretary of the American Committee for the Protection of Foreign Born?

A. I think it was December 27th or 29th of 1941.

Q. It could have been December 29, 1941?

A. Yes, sir.

Q. Now, who elected you secretary on or about December 29, 1941?

A. The Board of Directors of the American Committee.

Q. At that time the American Committee had a Board of Directors?

A. Board of Directors, yes.

Q. Now, I don't want to go over at this time each election, but you have been reelected annually since then; is that correct?

A. Yes.

Q. Now, who reelected you in your various reelections?

A. Since 1941 I believe it has been the annual conference [fol. 4820] when held that elected all officers, including the Executive Secretary.

. . . . . .

[fol. 4822] By Mr. Forer:

Q. All right. Now, in 1936 when you first had anything to do with the American Committee for the Protection of Foreign Born, did the American Committee have an Executive Secretary?

A. Yes.

Q. Who was the Executive Secretary at that time?

A. Dwight C. Morgan. I don't know whether he was called Executive Secretary or Secretary. I believe it was the latter, but essentially the duties and responsibilities are the same.

Q. You mentioned Irving Novick. In 1936, at this time when Dwight C. Morgan was Executive Secretary, did Irving Novick have a position with the American Committee for the Protection of Foreign Born?

A. It is my recollection at that time he had the post of treasurer.

Q. He was treasurer.

Now, what happened to Mr. Morgan?

A. Mr. Morgan died in the latter part of 1938. I believe he had a cerebral hemorrhage then.

Q. Now, who assumed his duties after his death?

A. Mr. Novick assumed his duties, although not his public post.

Q. You mean, but Mr. Novick was acting secretary?

A. Acting secretary.

Q. About how long was Mr. Novick acting secretary?

[fol. 4823] A. For a period of about a year and a half to two years.

Q. Can you tell us about when that was?

A. Well, I believe during the years of—I believe it was at the very end of 1938 that he became acting secretary, and then through 1939 through 1940, most of 1940. It was about two years, I would estimate.

Q. Now, at that time did Mr. Novick become the secretary rather than the acting secretary at any time during this period of 1939 toward the end of 1940?

A. No.

Q. He was just acting secretary?

A. Acting secretary throughout that period.

Q. Now, do you know why it was or how it was that at that time—well strike that. Well, toward the end of 1940, did someone become Secretary or Executive Secretary, getting the full title rather than the acting title?

A. Yes.

Q. And what was the name of that individual.

A. Curt Swinburne.

Q. And do you remember when in 1940 Curt Swinburne became Executive Secretary of the American Committee? Let's call him Executive Secretary for the purposes of my questions and your answers, whether his title was officially Secretary or Executive Secretary at the time.

A. It was on or about—

• • • • • • •

[fol. 4824] Q. Do you remember the pending question, Mr. Green?

A. No.

Mr. Morrissey: Read it back, will you please?

(The pending question was read by the reporter.)

The Witness: It was some time, as I remember, around the end of October 1940.

By Mr. Forer:

Q. Now, was there any reason why Mr. Novick did not succeed Mr. Morgan as Secretary or Executive Secretary at the time that Mr. Morgan died?

[fol. 4825] A. It was purely Mr. Novick's own decision. It was the general feeling, including my own at the time, that he should become Secretary; that he had the qualifications and the ability to serve as Secretary, but he did not want to accept the post because of his feelings that the Secretary of the American Committee for the Protection of Foreign Born or the Executive Secretary, the leading administrative officer, should be a native-born person. Mr. Novick himself had been an immigrant and was a naturalized citizen. He felt—he was always very self conscious about his accent, and there was nothing that could convince him that he should become Secretary. It was at this

time this specific factor which more or less determined in his own mind, the best that I could figure it out, that someone who was a native-born person, like Mr. Morgan or Mr. Swinburne at that time when Mr. Swinburne came to the organization, who should be the spokesman for the organization and the Executive Secretary.

Q. Well, now, when Mr. Swinburne became Secretary or Executive Secretary toward the end of 1940, what happened to Mr. Novick?

A. At that time because of the, I would say, big case load, big load of the tremendous amount of work that developed in the period of alien registration when the Smith Act, which was then known as the alien registration act, was first passed by Congress, and there were literally hun-
[fol. 4826] dreds upon hundreds of non-citizens who came to the office of the American Committee seeking advice and help in the filling out of the questionnaires under the alien registration act that it was felt advisable to establish a New York Committee for the Protection of Foreign Born to deal with the people coming into the office so that the service could be extended to the people, this kind of work in dealing with the people directly and in filling out questionnaires and in filing applications for citizenship, since a large number of people became very anxious to become citizens, that the New York Committee for the Protection of Foreign Born was established to handle this case load, and Mr. Novick was assigned responsibility for the work of this New York Committee for the Protection of Foreign Born.

Q. Now, in 1940 who had the principal authority or what body of the American Committee for the Protection of Foreign Born was the governing body?

A. The annual conference, the national conference.

Q. The annual conference met once a year, but when the annual conference wasn't sitting, who had the authority and charge of the organization; that is, what was the body empowered to make decisions and settle policy?

A. The title of the body varied.

Q. I am talking about 1940.

A. In 1940 I believe it was the Board of Directors, which was elected by the annual conference.

. . . . . .

[fol. 4836] Mr. Forer: Mr. Chairman, Respondent's Exhibit 127 for identification is a one page mimeographed document giving the minutes of a meeting of the Emergency Committee of the National Board of Directors of the American Committee for Protection of Foreign Born, held on [fol. 4837] Monday, December 29, 1941, at Room 1505, 79—5th Avenue, New York City. Was that the address of the American Committee for Protection of Foreign Born at that time; that is, Room 1505, 79—5th Avenue?

A. That was the address of the American Committee. That is where it had its offices.

. . . . . .

Q. In other words, this was an emergency meeting following the outbreak of the war, shortly after Pearl Harbor?

A. Yes.

. . . . . .

[fol. 4841] Mr. Forer: I want to call to your attention, Mr. Chairman, the following things on Respondent's Exhibit 127, the minutes for December 29, 1941.

Paragraph 2 shows that Mr. Green reported on the need for reorganization of the Committee's personnel to fill vacancies and to meet responsibilities growing out of the war. Then it says that Curt Swinburne, Secretary, has found it necessary to secure other employment and has not been functioning as secretary for several months. "Irving Novick, Naturalization Aid Director, has requested that he be relieved of his responsibilities in order to seek other employment."

Then the minutes go on to show that Mr. Swinburne's resignation was accepted and that Abner Green was elected [fol. 4842] to serve as secretary. This is documentary corroboration of Mr. Green's testimony that he succeeded Mr. Swinburne as secretary. He said either December 27 or 29, 1941, and it shows December 29.

. . . . . .

[fol. 4844] Q. Did Mr. Novick resign at or about that time; that is, at or about the time that those minutes are dated and show his resignation was accepted? Did he resign from the American Committee?

A. Yes.

. . . . . .

[fol. 4845] Q. Now, Mr. Green, John Lautner testified here on the stand, under oath, that in 1942, he believed about the spring, there was a meeting at Communist Party Headquarters at which were present Mr. Lautner and a man by the name of Avro Landy, both of them representing the Communist Party, and you and Mr. Irving Novick, and that at this meeting Lautner and Landy, representing the Communist Party, explored some difficulties that were supposed to exist between you and Mr. Novick and that they decided; that is, that Lautner and Landy then decided to remove Novick as secretary of the American Committee for Protection of Foreign Born and put you as Mr. Novick's successor. I believe you were present in the room when that testimony was given; is that right?

A. Yes, sir.

Q. You recall the testimony I am referring to?

A. I do, yes, sir.

Q. Now, was that testimony that Mr. Lautner gave true?

A. It was completely false. Certain of the testimony [fol. 4846] doesn't require a denial. Very obviously from what I have said, I did not succeed Irving Novick.

Q. Never mind the detail. The point is that you mean Mr. Lautner's testimony about this meeting was false?

A. Completely.

Q. Now, according to Mr. Lautner's testimony, he and Avro Landy removed Novick as Executive Secretary and put you in as Mr. Novick's successor. Now, did you succeed Mr. Novick as Executive Secretary?

A. No, I did not.

Q. Who did you succeed as Executive Secretary?

A. I succeeded Curt Swinburne as Executive Secretary of the American Committee.

. . . . . .

[fol. 4862] By Mr. Forer:

Q. Mr. Green, going back to the time when Curt Swinburne was executive secretary of the Committee for Protection of Foreign Born, as I understand it at that time Mr. Novick was in charge of the New York Committee's office and Naturalization Aid Director. Was there any difference in salary between what Mr. Swinburne was receiving as executive secretary and what Mr. Swinburne was receiving at that time in the job he had? I am talking about the salary from the American Committee for Protection of Foreign Born.

A. To the best of my recollection, there wasn't any difference in the salaries paid Mr. Swinburne and Mr. Novick.

• • • • • • •

[fol. 4863] Q. What about you? Did you receive more at that time; that is, during the period when Mr. Swinburne was executive secretary, as you recall it? Was your salary more or less than the salary of Mr. Swinburne and Mr. Novick?

A. I believe it was slightly less at the time because my responsibilities were less.

Q. Did you get an increase in salary when you became executive secretary?

A. No.

Q. You mean you still had the same salary as before?

A. Yes.

Q. Which was less than Mr. Novick had previously been making; is that right?

A. Yes. It wasn't a large difference.

• • • • • • •

[fol. 4873] Q. Before I go on to that conference, you have already told us that the national conference was the chief governing body. In general, what was its function and what did it do when it met?

A. The purpose of the annual national conference at that time, to the present date, is to serve as a general review of the work of the American Committee for Protection of Foreign Born during the preceding year, to discuss current problems facing the organization, and, in

addition, of course, facing the foreign born in the United States and to work out a general program for the coming year to serve as a guide for the work of the organization and the administrative staff and the officers in carrying out the program of the American Committee.

Q. Does this national conference set policies for the organization?

[fol. 4874] A. The national conference is actually the only body of the American Committee that has ever set the policies of the organization.

Q. Now, does the national conference elect the officers of the American Committee?

A. It does at the present time.

Q. Are the policies and decisions of the national conference binding on the officers of the American Committee?

A. Yes.

* * * * * * *

[fol. 4880] Q. At these conferences, and I am now talking about all of them, do people vote at these conferences from time to time?

A. Usually the final business session is a session where there is a report from the various committees of the conference, such as Credentials Committee, Nominating Committee, Resolutions Committee, and then on occasions there has been a committee on the constitution, when consideration of the constitution is felt advisable or at times the Resolution Committee handles the question of any amendments to the constitution.

All of these reports are voted upon by the conference and amended or adopted or voted in.

Q. Who can vote on these various matters?

A. Anyone who is present at that session at the time when this business is conducted can vote on these committee reports.

* * * * * * *

[fol. 4883] Q. It is true, is it not, that the secretary or executive secretary has always been the chief administrative officer of the American Committee?

A. Yes, sir.

Q. And that is a salaried position, right?

A. Yes.

Q. The office of chairman, has that been a salaried position?

A. No, it has never been a salaried position.

Q. But the secretary is expected to work full time; is that correct?

A. To work in the office or anywhere else for the organization, yes.

* * * * * * * *

[fol. 5094] January 12, 1956

By Mr. Forer:

Q. There is already in evidence Respondent's Exhibit 88, which was the constitution, which, as you have already testified and as Dr. Smith testified, is the current constitution of the American Committee for Protection of Foreign Born, which was adopted, I believe, in December of 1950. Is that [fol. 5095] correct?

A. Correct.

Q. Now the last paragraph of article 2 says that the American Committee shall be an unaffiliated, non-membership, independent, non-partisan body. Is it a fact that the American Committee is a non-membership body?

A. Yes.

Q. And has that been a fact at all times since the adoption of this current constitution which was adopted in December of 1950?

A. No.

Q. You mean that at sometime since the constitution, the current constitution, was adopted in December of 1950 it has not been a non-membership body?

A. I am sorry, I thought you referred to a period before 1950.

Q. No, since the current constitution was adopted—the current constitution—has the American Committee at all times been a non-membership body?

A. Yes.

Q. We'll get to the situation of what existed before the 1950 constitution was adopted. Now talking merely of the time since the constitution was adopted and up to the present moment, does the Committee have or did it have at any

time during that period any requirements or definition of [fol. 5096] a member of the American Committee?

A. No.

Q. At any time during that period and as of this moment, has the Committee issued membership cards to any individuals showing that they were a member of the organization?

A. No.

Q. Does the Committee have or maintain a list of members or has it had any list of members at any time since the constitution, the current constitution was adopted in December of 1950?

A. No.

Q. During this period that we are talking about, has there ever been a membership meeting or any meeting called a membership meeting of the American Committee?

A. No.

Q. Now from time to time since this constitution was adopted, there have been officers elected and there have been votes adopting resolutions on behalf of the American Committee; correct?

A. Yes.

Q. Were those officers elected by members?

A. No.

Q. Was the voting during this period of time done by members?

A. No.

[fol. 5097] Q. Now we have already, both in your testimony and in Dr. Smith's testimony, brought out the fact that officers were elected at the annual conference where they voted on the policies of the organization, and you have already testified and Professor Smith testified that anybody could vote if they registered, and that the only condition on registering was payment of the registration fee, two dollars or so. Did the right to vote, as a result of paying this registration fee and registering, was that conditioned in any way upon membership in the organization?

A. No. The only condition to voting was registering at the conference and there could not have been any condition of membership since there were no members.

* * * * * * *

[fol. 5231] January 17, 1956

By Mr. Forer:

Q. Did you speak at the meeting in Los Angeles on January 5, 1951, which is referred to in Petitioner's Exhibits 65 and 66?

A. As I recall, I was in Los Angeles at that time and spoke at that meeting on January 5, 1951.

Q. And was that an evening meeting?

A. That was a meeting held in the evening.

Q. Was that held in the Convention Hall of the Embassy Auditorium?

A. I remember it was held in the Embassy Auditorium. The leaflet says Convention Hall. I assume that is the hall it was held at. I don't remember the names of the various halls.

Q. Now, how did you come to be in Los Angeles in January of 1951? I mean, did you make a special trip out for this meeting or what?

A. No, the deportation hearings were scheduled in the case of Dr. Krishna Chandra, noncitizen, who faced deportation to India on the charge of membership in the International Workers Order, and the hearings then were at that time scheduled on January 10th and 11th in San Francisco. Dr. Chandra was a resident at that time and still is of Sacramento, California. In view of the fact that I was going to go to the hearings in San Francisco, because we felt that this question of deportation of people for membership in a fraternal insurance organization was a very important one so far as the rights of noncitizens were [fol. 5232] concerned, that I communicated with Los Angeles and indicated that I was to be in San Francisco at that time on or about January 10th; I was scheduled to get to San Francisco actually about January 8th or 9th, I believe, and I would be willing to appear at a meeting if one were to be organized in Los Angeles, and that was the manner in which this meeting of January 5th resulted.

At the time, if I remember correctly, there were some four noncitizens who had been held at Terminal Island without bail in deportation proceedings since October of

1949, and these four cases eventually resulted in the extremely important decision by the Supreme Court known as the Carlson case, where the Supreme Court sustained the Justice Department's rights to hold noncitizens without bail in deportation proceedings if there are legitimate grounds.

• • • • • • •

[fols. 5528-6445] February 7, 1956

Cross examination.

By Mr. Knight:

• • • • • • •

[fol. 6560] February 8, 1956

Q. Well, what is your recollection of that meeting in the month of May 1950 then, Mr. Green?

A. It was a meeting called by the American Committee for the Protection of Foreign Born at which there was some ten or fifteen participants, the meeting being devoted to the general problem of the cases then pending in New England and the work of the American Committee for the Protection of Foreign Born. What I did at the meeting and in the course of my discussion was to urge the establishment of some organization. Some people at that time volunteered to set up a committee, but that committee was never set up at that time. It just simply never functioned, never had an office, never had an address; some people with perhaps good intentions who never did anything about those intentions in 1950. That is the full substance of my recollection of the meeting.

• • • • • • •

[fol. 6594] Q. Now, Mr. Green, in the year 1947, would you tell us, please, how many deportation cases were being handled by the American Committee for Protection of Foreign Born, speaking of deportation based on political reasons?

A. I believe there were two hundred cases pending at that time. Maybe I am not correct in the exact figure. It is within that figure.

Q. Your best recollection is two hundred?

A. Yes.

Q. Now, when you name that figure of two hundred, Mr. Green, are you including any cases which may have been pending in the office of the Mid-West Committee for Protec-
[fol. 6595] tion of Foreign Born?

A. Yes, I am including all cases in which the charges were based on the political opinions, as requested in your question.

• • • • • • •

[fol. 6596] Q. Did those two hundred cases include cases handled by the Mid-West Committee for Protection of Foreign Born?

A. Yes. Certainly. The case like the Martinez case, in which the Mid-West Committee defended Martinez and the American Committee issued material and carried on activity seeking to prevent his deportation.

• • • • • • •

[fol. 6721] February 10, 1956

By Mr. Knight:

Q. Now, in the year 1949, Mr. Green, do you know how many deportation cases there were pending in the office of the American Committee? I am speaking now of deportation cases for present or past membership in the Communist Party?

A. I would say the same two hundred that had been pending in 1948, plus possibly an additional fifty.

Q. Now, when we use the expression political cases, Mr. Green, would you define for us, please, what a political case is?

A. I will be glad to, Mr. Knight, except you used it first. I would appreciate your reformulating the question. My understanding of a political case is a case in which the charge is based on past or present membership in an organization advocating the overthrow of the Government by force and violence, under the act of 1939 as amended by the 1940 act.

• • • • • • •

[fol. 6722] Q. Yes, sir.

Now, would that figure, that over-all figure which you have given me of 250 of those cases in the year 1949, in-

cluded in that figure are there cases which were handled by say the Michigan Committee for the Protection of Foreign Born or the Midwest Committee for the Protection of Foreign Born?

A. Yes.

Q. And would the same apply to the Los Angeles Committee for the Protection of Foreign Born?

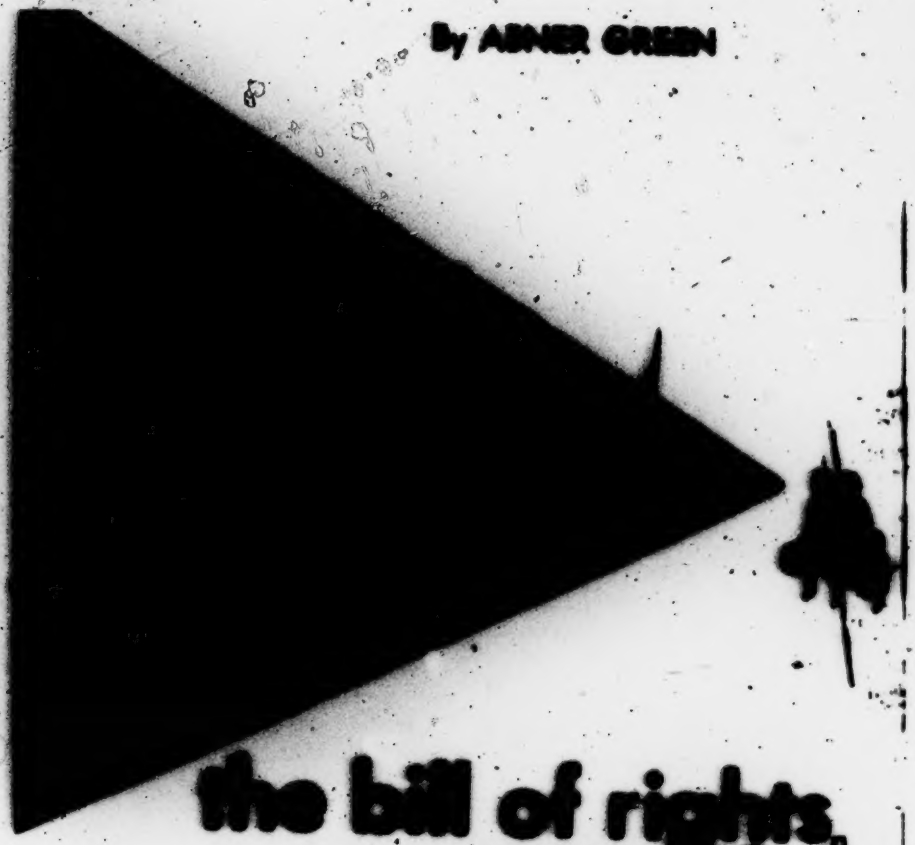
A. Yes.

Q. And the Northwest Committee for the Protection of Foreign Born?

A. Yes.

• • • • • • •

By ABNER GREEN



the bill of rights

COPY NO. 1

SUBVERSIVE ACTIVITIES CONTROL BOARD
Petitioner's
EXHIBIT NO. 57
Docket 100-53
Total Parts
v. Attorney General
Offered in Evidence
Received in Evidence
Reporter

THE McCARRAN ACT AND THE FOREIGN BORN



[fol. 6879] PETITIONER'S EXHIBIT No. 56

[fol. 6880]

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Midwest Office
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Northwest Office
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California Office
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HONORARY CO-CHAIRMEN

DR. THOMAS MANN — RT. REV. ARTHUR W. MOULTON

Co-Chairmen

REV. JOHN W. DARR, JR. — GEORGE B. MURPHY, JR.

Executive Secretary
ABNER GREEN

Administrative Secretary
HARRIET BARBON

General Counsel
CAROL KING

Naturalization Aid Director
DOROTHY STRANGE

Treasurer
CHARLES MUSIL

[fol. 6881]

SUPREME COURT OF THE UNITED STATES

No. 909, October Term, 1963

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, Petitioner,

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

ORDER ALLOWING CERTIORARI—April 27, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

April 27, 1964

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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INDEX

	Page
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement of the Case	4
Reasons for Allowing the Writ	12
A. Consequences of the decision below	15
B. The meaning of the aid component of section 3(4)	18
C. Constitutional questions	22
1. Vagueness	22
2. The First Amendment	23
3. Preclusion	24
D. Questions arising from the application of the control component	26
1. Lautner and the curtailment of cross-examination	26
2. Other Lautner testimony	28
3. Area Committees	29
4. The "thread of Communist interest"	30
Conclusion	34

Appendix A—The opinion below	1a
Appendix B—The judgment below	25a
Appendix C—Statute involved	26a

INDEX OF CITATIONS

Cases:	Page
Alford v. United States, 282 U. S. 687	27
Baker v. Carr, 369 U. S. 186	25
Barber v. Gonzales, 347 U. S. 637	8
Barton v. Sentner, 355 U. S. 2	8
Bonetti v. Rogers, 356 U. S. 691	8
Carlson v. Landon, 342 U. S. 524	8, 10, 33
Chastleton Corp. v. Sinclair, 246 U. S. 543	25
Chaunt v. United States, 364 U. S. 350	8
Chew v. Colding, 344 U. S. 590	8
Communist Party v. S.A.C.B., 367 U. S. 1	3, 23, 25
Cramp v. Bd. of Public Instruction, 368 U. S. 278	22
DeJonge v. Oregon, 299 U. S. 353	24
Dombrowski v. Pfister (E. D. La. 1964)	17
Eisler v. United States, 353 U. S. 857; 338 U. S. 189; 338 U. S. 883	31
Estes v. Potter, 183 F. 2d 865	32
Flemming v. Nestor, 363 U. S. 603	8
Galvan v. Press, 347 U. S. 522	10
Gastelum-Quinones v. Kennedy, 374 U. S. 469	8
Harisiades v. Shaughnessy, 342 U. S. 580	8, 10, 33
Heikkila v. Barber, 345 U. S. 229	8
Hyun v. Landon, 350 U. S. 990	8
Jay v. Boyd, 351 U. S. 345	8, 10
Kimm v. Rosenberg, 363 U. S. 405	8
Kirby v. United States, 174 U. S. 47	25
Maisenberg v. United States, 356 U. S. 670	8
N.A.A.C.P. v. Alabama, 357 U. S. 449	23
N.A.A.C.P. v. Button, 371 U. S. 415	23, 24
National Council of American-Soviet Friendship v. S.A.C.B., 322 F. 2d 375	21
Niukkanen v. McAlexander, 362 U. S. 390	8
Noto v. United States, 367 U. S. 290	25
Renaud v. Abbott, 116 U. S. 277	25
Rowoldt v. Perfetto, 355 U. S. 115	8, 10
Scales v. United States, 367 U. S. 203	24
S.E.C. v. Chenery Corp., 318 U. S. 80	30
S.E.C. v. Chenery Corp., 332 U. S. 194	30
Shelton v. Tucker, 364 U. S. 479	24
Talley v. California, 362 U. S. 60	24
United States v. Carolene Products Co., 304 U. S. 144	25

Page

United States ex rel. Doyle v. District Director, 169 F. 2d 753 31
United States v. Spector, 343 U. S. 169 ..... 8, 33
United States v. Witkovich, 353 U. S. 194 8

STATUTES:

Subversive Activities Control Act, 64 Stat. 987 ..... 2, 26a

Sec. 2 ..... 3, 20, 21
Sec. 2(6) 21
Sec. 2(7) 21
Sec. 3(3) 13
Sec. 3(4) 3, 4, 18, 20, 21, 24
Sec. 5(a) 5
Sec. 6 5
Sec. 7 2
Sec. 7(b) 4, 10
Sec. 7(c) 4
Sec. 7(e) 4
Sec. 9(b) 4
Sec. 10 5
Sec. 11 5
Sec. 13 3
Sec. 13(f)(3) 21
Sec. 13(g)(1) 1
Sec. 13A, 50 U. S. C. 792a 3
Sec. 14(a) 2, 10
Sec. 14(b) 5
Sec. 15 5

Sec. 10, Communist Control Act of 1954, 50 U. S. C. 792a 3

Alien Registration Act of 1940, 54 Stat. 670 33
8 U. S. C. 1251(a)(6)(D) 5
8 U. S. C. 1451(c) 5
20 U. S. C. 581(f) 5
28 U. S. C. 1254 2
42 U. S. C. 410(a)(17) 5
42 U. S. C. 1874(d)(2) 5

MISCELLANEOUS:

Chafee, The Blessings of Liberty (1956) 14, 16
Washington Evening Star, Sept. 14, 1962 17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No.

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

American Committee for Protection of Foreign Born petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia Circuit (R. 116; Appendix B herein), which affirmed (Chief Judge Bazelon dissenting) an order of the Subversive Activities Control Board (R. 78), entered under section 13(g)(1) of the Subversive Activities Control Act of 1950, 64 Stat. 1000, 50 U.S.C. 792(g)(1), that petitioner

register as a Communist-front organization under section 7 of the Act, 64 Stat. 993, 50 U.S.C. 786.[1]

OPINION BELOW

The opinion below (R. 93; Appendix A herein) has not yet been reported.

JURISDICTION

The judgment below is dated and was entered on December 17, 1963 (R. 116). Jurisdiction of this Court is conferred by section 14(a) of the Act, 64 Stat. 1001, 50 U.S.C. 793, and 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether the provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face or as applied in this case.

2. Whether an organization satisfies the Act's requirement that a Communist-front organization be "primarily operated for the purpose of giving aid and support to a Communist-action organization" (i.e., the Communist Party) by reason of engaging in peaceable activities for the forwarding of innocent objectives—specifically, in this case, defending by litigation and other lawful means the rights of any foreign-born who seek its help.

3. Whether an organization accused of being a Communist-front organization may be conclusively bound by a Board finding, made in an earlier proceeding to which the

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[1] The Subversive Activities Control Act, as amended, is Title I of the Internal Security Act of 1950, 64 Stat. 987, and is hereafter referred to as the Act. The Subversive Activities Control Board is hereafter called the Board. "Tr." refers to the original transcript of record, which has been filed with the Court in addition to the certified record ("R."). "P. Ex." refers to an exhibit introduced at the administrative hearing by the Attorney General. "R. Ex." refers to an exhibit introduced at the administrative hearing by petitioner (respondent at the hearing).

accused organization was not a party, that the Communist Party is a Communist-action organization.

4. Whether the court below accorded a fair and adequate review of the findings and conclusions of the Board.

5. Whether the evidence supports the order of the Board.

6. Whether the Board erroneously curtailed cross-examination of a key witness for the Attorney General.

7. Whether an organization may be found to be a Communist-front organization on the basis of evidence and findings concerning other organizations with which it cooperates but which it does not control.

8. Whether the order of the Board and its affirmance below rest on irrelevant considerations and incompetent evidence.

STATUTE INVOLVED

Pertinent provisions of the Act are set forth in Appendix C herein.

STATEMENT OF THE CASE

This is the first case to present to the Court an order requiring an organization to register as a Communist-front organization under the Act.

The Act

Section 13 of the Act provides for administrative proceedings before the Board, instituted by petitions of the Attorney General, to determine whether accused organizations shall be ordered to register as "Communist-action" or "Communist-front" organizations.[2] On April 20, 1953,

[2] The Act also authorizes the Board to declare whether organizations are "Communist-infiltrated" organizations. Such organizations are deprived of the benefits of the National Labor Relations Act, but are not required to register. Sec. 13A, added by sec. 10 of the Communist Control Act of 1954, 50 U.S.C. 792a.

in the first case brought under the Act, the Board ordered the Communist Party of the United States of America to register as a Communist-action organization (R. 24). That order was eventually sustained in *Communist Party* v. *S.A.C.B.*, 367 U.S. 1 (four Justices dissenting).

A Communist-front organization is defined by section 3(4) of the Act as one "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title."[3]

A Communist-front organization is required to register as such with the Attorney General (sec. 7(b)). It must also file with the Attorney General a registration statement showing the names and addresses of its officers, an accounting for the preceding twelve months of all moneys received and expended, including the sources from which received and the purposes for which expended, and a listing of all printing and duplicating facilities possessed, owned or controlled by the organization, its officers and members (sec. 7(c)). Annual reports must be filed to keep the registration statement current (sec. 7(e)). The registration, registration statements and annual reports must be kept open for public inspection (sec. 9(b)).

The organization must label any publication which it distributes through the mail or interstate or foreign commerce with the legend, appearing on both the publication and the outside envelope or wrapper, "Disseminated by ....., a Communist organization." Its radio and television broadcasts must be announced as sponsored by

[3] The references in section 3(4) to a Communist foreign government and the world Communist movement are not applicable here, since petitioner was found to be controlled by, and primarily operated for the purpose of giving aid to, the Communist Party, "a Communist-action organization" (R. 74).

a Communist organization. (Sec. 10) Contributions to the organization are not tax deductible, and the organization itself is denied tax exemption (sec. 11). Service in the employ of the organization is not considered employment for social security purposes (42 U.S.C. 410(a)(17)). Employees of the government or of any privately owned "defense facility" may not contribute funds or services to the organization (sec. 5(a)(2)).

Members of the organization may not use or apply for passports (sec. 6). They may not hold employment with the federal government or any labor organization, and must disclose their membership when seeking employment in any defense facility (sec. 5(a)). They may not apply for fellowships or loans under the National Defense Education Act (20 U.S.C. 581(f)) or for National Science Foundation scholarships or fellowships (42 U.S.C. 1874(d)(2)). If aliens, they may not be naturalized and are subject to deportation (8 U.S.C. 1251(a)(6)(D)). If recently naturalized, they are prima facie liable to denaturalization (8 U.S.C. 1451(c)).

These consequences apply when the order becomes final by virtue of the exhaustion of judicial review (sec. 14(b)). The Act imposes severe criminal penalties for failure to register after a registration order has become final and for violation of the Act's sanctions on the organization and its members (sec. 15).

The Petitioner

Petitioner, an unincorporated association, was formed in November 1933 by the American Civil Liberties Union and several labor union locals (P. Ex. 242). Its purpose, as stated in its Constitution, is to promote the interests of the foreign-born in the United States "regardless of race, color, nationality, creed, or place of birth" (R. 49).

Petitioner's governing authority is its Annual Conference (R. Ex. 88). Notice of the Annual Conference is

given by sending thousands of calls to organizations and individuals who may be interested in attending. Anyone may attend the Conference either as an individual or as a delegate of an organization. Upon registering and paying a registration fee of one or two dollars, he may participate fully in the Conference's deliberations and actions, including the election of petitioner's officers and the adoption of its policies and programs. The Conferences have been attended by as many as 300 to 400 people, including delegates from various organizations (nationality, trade union, church, civil liberties, and women's groups, etc.). (R. 63; Tr. 4874-81, 4136-41; 4600-01.)

Petitioner's top staff official is its Executive Secretary. Abner Green joined petitioner's staff in 1936, became Executive Secretary in 1941, and held that position continuously thereafter. During his tenure as Executive Secretary, Green was the leading figure in the operation of petitioner and its affairs.[4] (R. 36.)

Petitioner's office is in New York City (R. 28). There also exist various local or regional Committees for Protection of Foreign Born, such as a Los Angeles Committee for Protection of Foreign Born, a New England Committee for Protection of Foreign Born, etc. (R. 29), which we here call Area Committees.

The Area Committees sometimes referred to themselves as chapters, branches or affiliates of petitioner, and petitioner sometimes referred to the Area Committees in similar terms. Simultaneously, petitioner would state that the Area Committees were not its branches or affiliates. (R. 30-35; Tr. 5184).

Disregarding nomenclature, the evidence is uncontradicted as to the relationship between the Area Committees and petitioner. Petitioner encouraged the formation of Area Committees and took the initiative in getting some of

[4] Mr. Green died on September 9, 1959.

them organized (Tr. 5296-97, 5138, 5143-46). Other Area Committees were organized without petitioner's participation and sometimes without its knowledge (Tr. 5172-74, 5225-26, 5230, 5261-62, 5274-75). Generally, formation of Area Committees was an outgrowth of the initiation of deportation cases in the area which aroused local concern or indignation (Tr. 4132, 5292-96). The Area Committees work along lines and have announced policies similar to those of petitioner. Petitioner and the Area Committees exchange literature and otherwise cooperate. Petitioner, however, neither has nor exercises authority or control over the Area Committees. They elect their own officers, decide their own policies, methods and activities, raise and spend their own funds as they see fit—all without intervention or direction of petitioner. Thus each Area Committee is completely its own master and independent of any other Area Committee and of petitioner. (Tr. 4132-36, 4433, 4494, 5121-22, 5127, 5130-43, 5805-07; R. 31, 34.)

Throughout its history petitioner has engaged in a vast variety and scope of activities relating to almost every conceivable issue involving the rights of the foreign born, and it has issued a tremendous volume of literature, of which the record contains a sampling. Its work includes educational projects and material, legislative work, mounting public campaigns on legislation and matters of interest to the foreign born, technical assistance to applicants for naturalization, legal defense work, etc.[5]

Petitioner has always opposed the deportation of resident aliens and the denaturalization of naturalized citizens, no matter what the basis for the action (Tr. 5960-63, 4909-10, 4926-27, 5557). Thus in 1942 it opposed both denatural-

[5] See R. 61-62 and the numerous exhibits from both sides of issues of petitioner's publication, *The Lamp*, of proceedings of its Annual Conferences, and of its other publications. See also Tr. 5598-5603, 5676-77, 5683-5959, 5983-6058, 6088-98, 6113-16, 6180-97, 4102, 4957, 4956-62, 5376.

ization actions against members of the German-American Bund and other Nazi or fascist sympathizers and the denaturalization action against William Schneiderman, a leading Communist (Tr. 5325-28).

Petitioner's defense work consists of litigating or otherwise intervening in behalf of specific aliens or naturalized citizens involved in problems connected with their foreign origin. This defense work has included assistance to aliens being refused naturalization on various grounds, to aliens facing deportation charges, and to naturalized citizens facing denaturalization actions. (R. 61; A.G. Ex. 259, pp. 7-10; Tr. 5927-29, 5974-83, 6014-15, 6057-80, 6053-54.) Defense work also includes the issuance of literature on the cases appealing to the public to protest the deportation or denaturalization action and to contribute funds for the defense effort (R. 61-62, 65-68; R. Ex. 97, 174, 232; P. Ex. 2, 18).

Petitioner is publicly committed, and has never refused, to assist any individual who seeks its help in a deportation or denaturalization case, no matter what the charge involved (Tr. 4142-44, 5488-90). If desired, and if the case is defensible, petitioner supplies counsel and handles the litigation in the administrative and judicial proceedings, sometimes through this Court and often successfully (Tr. 4142-44, 5212-13, 5488-90; R. 65).[6]

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[6] Among cases litigated in this Court by petitioner or an Area Committee or both in conjunction are *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Carlson* v. *Landon*, 342 U.S. 524; *United States* v. *Spector*, 343 U.S. 169; *Chew* v. *Colding*, 344 U.S. 590; *Heikkila* v. *Barber*, 345 U.S. 229; *Barber* v. *Gonzales*, 347 U.S. 637; *Hyun* v. *Landon*, 350 U.S. 990; *Jay* v. *Boyd*, 351 U.S. 345; *United States* v. *Witkovich*, 353 U.S. 194; *Barton* v. *Sentner*, 355 U.S. 2; *Rowoldt* v. *Perfetto*, 355 U.S. 115; *Heikkinen* v. *United States*, 355 U.S. 273; *Nowak* v. *United States*, 356 U.S. 660; *Maisenberg* v. *United States*, 356 U.S. 670; *Bonetti* v. *Rogers*, 356 U.S. 691; *Niukkanen* v. *McAlexander*, 362 U.S. 390; *Kimm* v. *Rosenberg*, 363 U.S. 405; *Flemming* v. *Nestor*, 363 U.S. 603; *Chaunt* v. *United States*, 364 U.S. 350; *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469.

All defense work is done at the expense of petitioner and without cost to the individual being assisted. No conditions of any kind are imposed on the assistance, nor is the alien or his family ever questioned about his political views or affiliations or subjected to indoctrination. (Tr. 4571-72, 4581-83, 5488-90.)

From its inception, petitioner defended deportation cases involving charges that the alien was or had been a member of the Communist Party (Tr. 5446, 5466-68, 4801). The first of petitioner's cases that Abner Green heard about, in 1935, was petitioner's defense of a Jewish refugee whom the Immigration Service was seeking to deport to Nazi Germany and sure death, on a charge that he had been a Communist in Germany (Tr. 4805-06). As the Board (R. 65) and the court below (R. 101) found, petitioner also has defended numerous non-Communists in deportation cases not involving charges of Communism or other political grounds. Abner Green, the one person in a position to know, testified that over a twenty year period petitioner defended 3,000 to 4,000 deportation cases, of which about 350 to 400 involved charges of past or present Communist Party membership or affiliation (Tr. 6112-13, 6122). The Board estimated, without citing any evidentiary basis, that the latter type of cases were "at least in excess of fifty percent" (R. 66).

Prior to 1946, deportation cases charging past or present Communist Party membership were few and occasional (Tr. 5396-97). But beginning in 1946, with the onset of the cold war, the Department of Justice instituted such cases in large quantity, most alleging Party membership of short duration in the '30's (Tr. 5397-99, 5454-55, 5969, 6116). The Department's drive was not restricted to security risks. It extended to aliens proceeded against on flimsy evidence; to aliens long resident in the United States whose Party membership, if any, had been nominal and many years past; to aliens whose expulsion would de-

stroy long-established American families. It was marked by highly questionable and oppressive procedures. (E.g., P. Ex. 17, 23, 47, 51, 166; R. Ex. 191, 173; Tr. 5412-27. See also *Rowoldt* v. *Perfetto*, 355 U.S. 115; the description of the aliens involved in *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 581-83; *Galvan* v. *Press*, 347 U.S. 522; *Carlson* v. *Landon*, 342 U.S. 524; *Jay* v. *Boyd*, 351 U.S. 345.)

The aliens and their families facing the Department's political deportation drive were generally poor, and in the prevailing climate the nature of the charge increased their difficulty in obtaining help. It was natural for them to come to petitioner, which was expert in the deportation field and publicly committed to helping any alien who sought its help, or to the Area Committees which operated on like principles. For example, when Charlie Soldo, a retired West Virginia coal miner, was arrested on a political deportation charge, his regular lawyer refused to represent him out of fear that it would hurt his (the lawyer's) reputation. It was then that the desperate Soldo family got help from the Western Pennsylvania Committee for Protection, which provided Soldo a lawyer without cost to him. The case was eventually won before the Board of Immigration Appeals because of the insufficiency of the evidence. (Tr. 6295-96, 6299-6300) 6311.)

Petitioner finances its activities by appeals to the public for funds and by sales of its literature (Tr. 4252-53, 6230-32). Its financial records are audited annually, and the audit summary is published each year in petitioner's periodical, *The Lamp* (Tr. 4141-42, 6233; R. Ex. 241, p. 4).

Prior to the cold war, petitioner's relations with the government, including the Department of Justice, were often amicable. Petitioner and the Immigration Service cooperated in projects of common interest (Tr. 5379-92; R. Ex. 212, 238, 239; R. 70). High government officials, including the Commissioner of Immigration and Naturalization, spoke at petitioner's Conferences and other affairs (R. 70;

R. Ex. 187, pp. 3-4; Tr. 5663-64, 5672, 5316-18, 5332, 5372; P. Ex. 165, 258, p. 20; R. Ex. 133, 135, 156, 170). The Department of Justice supplied to petitioner without charge radio time for a broadcast (R. 70; Tr. 5621-25), and the Office of War Information broadcast a program by petitioner (R. 70; Tr. 6227-29; R. Ex. 240). President Roosevelt, General Eisenhower, Attorneys General, other cabinet officers, Senators and Representatives sent messages to petitioner's affairs (R. Ex. 135, 38, 39, 133, 160, 162, 169, 167, 168; P. Ex. 165, 259, 160, 162, 163; R. 70; Tr. 5315, 5336, 5340, 5675-76).

These governmental manifestations of friendliness abounded in the proceedings of petitioner's 1945 Annual Conference (P. Ex. 259). The Annual Conference was not held in 1946 (Tr. 5387).

The next Annual Conference convened in October 1947 (P. Ex. 245). Petitioner's policies and positions were identical with what they had been before (Tr. 5400). Abner Green was still Executive Secretary. But the cold war was under way, and the anti-Communist deportation drive was in full swing. No government officials spoke or sent messages (P. Ex. 245). A year or two later, the Attorney General included petitioner on his so-called list of subversive organizations, without the formality of a hearing (Tr. 5082-83, 5086-88, 6901-02)[7]

The Proceeding

On April 22, 1953, the Attorney General instituted this proceeding by filing a petition with the Board for an order requiring petitioner to register as a Communist-front organization under section 7(b) of the Act (Tr. 7510). On

[7] But eminent private individuals thereafter continued participation in petitioner's affairs or projects including Thomas Mann (Tr. 5470-71, 5507; R. Ex. 152), Bishop Arthur W. Moulton (Tr. 7001 ff.), Prof. Anton J. Carlson (Tr. 4388 ff.), Prof. Louise Pettibone Smith (Tr. 3961 ff.), and many others (Tr. 5595-96).

August 28, 1953, the Attorney General filed an amended petition (R. 3). On June 27, 1960, the Board issued a registration order against petitioner (R. 78) and a Report (R. 22-77) containing its findings and conclusions. On August 25, 1960, petitioner filed a petition for review in the court below under section 14(a) of the Act (R. 18). On January 8, 1962, the court remanded the case to the Board for the purpose of allowing petitioner to introduce additional evidence that the testimony of the Attorney General's witness Hartle was false (R. 80-81). On March 8, 1962, the Board issued a "Report of the Board on Reconsideration" (R. 80-92), in which it held that Hartle's original testimony was credible and recommended affirmance of its order of June 27, 1960 (R. 92).[8]

At the administrative hearing, most of the testimony introduced by the Attorney General related to some of the Area Committees and their supposed connections with the Communist Party. Petitioner did not seek to refute this testimony. Instead, it introduced evidence that the Area Committees were independent organizations and contended that it could not be held liable for their actions. (R. 29; *supra*, pp. 6-7). The Board found that petitioner and the Area Committees constitute a single organization for the purposes of the Act (R. 35). It then, throughout its Report, relied on evidence concerning the Area Committees. Thus the Report's Concluding Findings (R. 72-74) summarize as findings relating to petitioner evidentiary findings relating to both petitioner and Area Committees.

The most damaging findings relating to petitioner itself were based on testimony of the Attorney General's witness Lautner. This testimony and the findings are later described, as is the curtailing of Lautner's cross-examination (*infra*, pp. 26-29).

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[8] Subsequent references herein to the Board's Report are to the original Report. For present purposes, the Report on Reconsideration is of no significance.

The Board concluded that petitioner met the definition of a Communist-front organization on the ground that it "has been and is (i) substantially directed, dominated, or controlled by the Communist Party of the United States, a Communist-action organization as defined in section 3(3) of the Act, and (ii) primarily operated for the purpose of giving aid and support to such Communist-action organization" (R. 74). At the administrative hearing, no evidence had been introduced to establish that the Communist Party was a Communist-action organization. The Board held that petitioner was bound in this respect by the Board's determination of April 20, 1953, made in the proceeding against the Party, to which petitioner was not a party (R. 24).

The court below affirmed the order of the Board, per Judges Prettyman and Danaher, with Chief Judge Bazelon dissenting (R. 93-115). The majority sustained the finding that the Party controlled petitioner on the basis of, among other things, the findings derived from the testimony of Lautner and the evidence concerning the Area Committees (*infra*, pp. 26-30). We later examine in some detail the principal bases of the court's conclusion on the control component in support of our contentions that the court did not grant an adequate and fair review, that it and the Board relied on irrelevant matters and incompetent evidence, and that it was error to rely on Lautner's testimony in view of the curtailment of his cross-examination (*infra*, pp. 26-34).

The court sustained the second half of the Board's conclusion—that petitioner is primarily operated for the purpose of giving aid and support to the Communist Party—on the ground that petitioner aided the Party by "contesting," through legal proceedings and otherwise, "the deportation of aliens and promoting their naturalization" (R. 101). The court's theory was that insofar as petitioner defended alien members of the Communist Party it thereby served the "direct aims and purposes of the Communist Party," and that insofar as petitioner defended non-Communists it aided the Party by improving the Party's public

relations (R. 101-03; see *infra*, pp. 18-20 for a fuller discussion). Neither the court nor the Board found that petitioner had advocated or otherwise sought to forward the violent overthrow of the government or other illicit objectives attributed to the Communist Party, that petitioner had recruited for the Party, given it financial aid, or attempted to promote Communist ideology. To the contrary, the court recognized that petitioner is "an organization which vigorously devotes itself to the protection of the rights of all and any foreign-born who seeks its help," an end which the court considered "a laudable objective" (R. 102).

Chief Judge Bazelon, dissenting, did not reach the finding on control (R. 109). He took the position that the Act, construed in accordance with the Congressional intent and so as to avoid "serious constitutional questions," did not reach organizations with "innocent objectives and innocent activities." By his construction, the aid component of the section 3(4) definition of a Communist-front organization is "limited to the purpose of aiding a Communist-action organization to advance the objectives of the world Communist movement." (R. 109-12.)

REASONS FOR ALLOWING THE WRIT

This case brings to the Court for the first time the provisions of the Subversive Activities Control Act requiring the registration of organizations found by the Board to be Communist-front organizations. Professor Chafee has said of these provisions:

> "Inasmuch as this part of the McCarran Act is likely to reach many groups whose purposes are cultural as well as political and who are engaged in exchanging ideas rather than winning elections, the interference with the lives of private citizens is much more extensive than in the case of the 'Communist-action' provisions." Chafee, *The Blessings of Liberty* (1956) 148.

The issues raised by this case go to the heart of this legislation—what it means, whether it is constitutional, and what is the role of judicial review of Board decisions. The resolution of these issues is of crucial importance to the constitutional right of association, to the administration and application of the Act, and to the reputation of American justice.

A. Consequences of the decision below

If the decision below stands, the immediate practical effect will be to destroy petitioner. A final registration order, together with the attendant sanctions on the organization and its members (*supra*, pp. 4-5), is obviously a death sentence for any cause organization. The organization cannot hope to retain its members and contributors, to win public support, to find an audience for its views, or even to hire a hall.

The registration death sentence here has been decreed for an organization which has for thirty years rendered unexcelled services in defending the foreign born from the rigors and inhumanities which characterize our immigration laws and their administration. Not the least of these services has been the able defense of aliens who could find no other defender because of the political nature of the deportation charges against them. (*Supra*, pp. 7-10.)

Yet petitioner was condemned not in spite of its contributions to society, but precisely because of them. For it was petitioner's defense of the foreign born, particularly in legal proceedings, which was held to satisfy the Act's requirement that Communist-front organizations be primarily operated for the purpose of giving aid and support to the Communist Party. At the administrative hearing, counsel for the Attorney General stated (Tr. 4720-21):

> "What we have attempted to do is simply to show that the American Committee defends these foreign people who are charged with present or past membership in

> the Communist Party, and as a means of doing it that they engaged counsel and in some cases paid counsel themselves for representing these foreign born people so charged."

The Board and the court below went further. They doomed petitioner not only for defending aliens accused of Communist Party membership, but also for defending aliens against whom there was no charge or suspicion of Communism—the incredible theory being that petitioner is a security risk rendering service to the Communist Party by doing good turns for non-Communists (see *infra*, pp. 18-20). Others will consider it a discredit to our system of justice that petitioner is being persecuted for defending persons in legal proceedings, particularly when the persecution is instigated and led by the governmental department which is petitioner's adversary in those proceedings.

By destroying petitioner, the decision below will deprive the entire foreign-born community of its most principled and skilled defender. And considering petitioner's fate, no other organization will be so foolhardy as to replace it in that role. Thus one ignoble result of this case will be to facilitate the prosecution of deportation and denaturalization cases by making it difficult or impossible for the accused to obtain counsel and other assistance.[9]

If the decision below stands, it will adversely affect all cause organizations, no matter what their field of operation. The decision authorizes the government to lay a heavy hand on such groups and their members for doing nothing more than promoting by lawful means objectives

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[9] Professor Chafee has observed (*op. cit.* 134): "The American Committee for Protection of Foreign Born has supplied competent lawyers to many aliens arrested on deportation charges, who might otherwise have been defenseless and who had ever so much to lose from mistaken decisions. Whatever objections can be made to some of the activities or backers of enterprises like these, it is plain that if the government pulls up the tares, it will pull up a good deal of wheat too."

which are considered commendable by many or most of the American people. So all petitioner did was to work by peaceable methods for an objective described by the court below as "laudable"—"the protection of the rights of all and any foreign-born who seek its help" (R. 102). By the same token, as Chief Judge Bazelon pointed out in his dissent, the Act can be used against any organization with "innocent objectives and innocent activities," including "promoting public school integration" (R. 109-10). The court below, bemused by a kind of Madison Avenue theory that the Communist movement must be deterred from improving its public image "by operating behind a facade of good deeds" (R. 103), has made the doing of good deeds a dangerous affair.

Nor will organizations derive much, if any, protection from the fact that the Act in terms applies only to organizations, even if they do good deeds, which are "substantially controlled" by the Communist Party. The loose, politicized standards employed by the Court in determining the control component (*infra*, pp. 26-34) plus the Board's compulsion to credit unreliable, paid informers (*infra*, pp. 26-29), always in inexhaustible supply, make it child's play to "prove" such control whenever the government has a mind to do so. Thus the decision below enables the Act to be utilized, like South Africa's Suppression of Communism Law[10] and like various state enactments,[11] as an

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[10] Under that law, Alan Paton has observed, "If you are not 100 per cent in favor of apartheid, then you are counted as 'assisting the spread of communism.'" Wash. Eve. Star, Sept. 14, 1962.

[11] "This Court knows from other litigation . . . that the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy. *All* of the organizations promoting Negro registration therefore fall within the definition of "communist party," and any member could be prosecuted under the Louisiana Anti-Subversion Law." Wisdom, J., dissenting, *Dombrowski* v. *Pfister* (E. D. La., 3-jdg. ct., 1964), not yet reported, emphasis in original.

instrument of oppression spuriously claimed to be a weapon against Communism.

Indeed, if the Act means what the majority held, it hardly needs to be formally employed to inhibit the right of association. Who can feel safe in joining an organization, no matter how sure he is that all of its actions are "laudable," if the organization can be found, as here, to be a Communist-front on the grounds that some of its leaders surreptitiously entertained pro-Communist motivations? Moreover, the decision below insures that all organizations doing good deeds will be subjected to federal surveillance for the detection of such hidden motivations.

B. The meaning of the aid component of section 3(4)

The foundation for these untoward results was laid by the court's construction of the aid component of section 3(4) of the Act. That section defines a Communist-front organization by two characteristics. The organization (1) must be "substantially directed, dominated or controlled by a Communist-action organization" (i.e., the Communist Party), and (2) must be "primarily[12] operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement." We call the first of these characteristics the control component, the second the aid component. The court's construction of the aid component raises a major question as to the meaning of the Act.

In applying the aid component, the court below found (R. 101) that petitioner "undoubtedly devoted the major portion of its efforts to contesting the deportation of aliens and promoting their naturalization. It furnished counsel and material in court cases in that area, issued statements, made pleas, and in every possible way battled in this behalf." This activity, the court held, aided and sup-

[12] The court below stated (R. 101) that "'primarily' does not necessarily mean principally; it may mean merely substantially."

ported the Communist Party in two ways. First, insofar as petitioner defended aliens who were members of the Communist Party, it thereby aided the Party itself, for "Obviously the naturalization of its members and the prevention of their deportation were direct aims and purposes of the Communist Party" (R. 101).

The second way in which petitioner aided the Communist Party, according to the court, was petitioner's defense of non-Communists. The court explained (R. 103):

> "... it is indubitably clear that any laudable, praiseworthy activity which is identified in the public mind with the Communist Party or with Communism, or is so identified in the minds of those being aided by the effort, or is identified as being within the community of policies advocated by the Party, is a benefit to and naturally an objective of the Party. The identification of itself with laudable causes would, of course, be a benefit to the Party, as it is to any organization. The identity of its prominent members with such causes is also a worthwhile project for an organization seeking power among the public. More subtle and less effective, but perhaps the only route to public acceptance available to a clandestine operator is to create a picture of a community of interest between its own causes and interests which bear public acclaim. This is indeed a subtle business, but if effectuated it would be a real and substantial aid and support to the Party. This is one of the theses of the statute. The Congress declared that the Communist movement attracts strength to itself by operating behind a facade of good deeds."[18]

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[18] The court never explained how the Communist Party is "identified in the public mind" with the beneficent activities of an organization which, like petitioner, has always stoutly maintained that it is controlled by nobody other than itself and promotes no policies except its own. Indeed, it is only the Board's order and the court's opinion which has improved the public relations of the Party by giving it credit for petitioner's "good deeds." The fact is that the court's theory is fundamentally inconsistent with sec. 2(7) of the Act, which recites that Communist-front organizations conceal the facts as to their true character and are thereby able to obtain a public support they would not otherwise get.

Neither the Board nor the court found, nor would the evidence have permitted them to find, that petitioner aided the Communist Party in any other way. There was no finding and no evidence that petitioner recruited members for the Communist Party, disseminated Communist ideology, or promoted such alleged Communist objectives as overthrowing the government by force and violence.

We share Chief Judge Bazelon's view that the aid component is not satisfied, as the majority held, by innocent activities directed toward innocent objectives even if the Communist Party also advocates the same objectives. Properly construed, the aid component refers to aid to the Communist Party in achieving the sinister objectives described in section 2 of the Act. At the most it can be expanded only to include direct aid to the Party itself in its organizational operations, such as recruiting members or giving it financial support. It does not include, as the majority held, such attenuated and speculative indirect benefits as improving the public "image" of the Party (R. 101) by promoting "laudable causes" (R. 103). Nor does it include assistance to individual Party members in their personal problems (and still less aid to non-Communists) merely because the Party as an organization may reap an indirect benefit therefrom. Defending from deportation an individual who is, or is accused of being or having been, a Communist is not aid to the Communist Party for the purposes of the Act, any more than is medical treatment of such an individual when he is ill.

Our view would ameliorate the constitutional problems of the Act (*infra*, pp. 22-24) and would avoid the grotesque and unseemly results of the decision below, which has converted an enactment supposedly designed to cope with dangers to the internal security into a deterrence to the doing of good deeds.

Our view also harmonizes section 3(4) with other provisions of the Act. First, as Chief Judge Bazelon pointed out

(R. 110), the severity of the penalties levied by the Act on members of Communist-front organizations, most of whom will not be Communists,[14] "shows that Congress had no intention of inflicting them on otherwise innocent people merely because of membership in otherwise innocent organizations that the Communist Party uses to advance an innocent aim."

That the Communist-front provisions of the Act are not aimed at innocent activities also appears from sections 2(7) and 13(f)(3) of the Act. Section 2(7) recites, as the justification for the Communist-front provisions, that Communist Parties operate through Communist-front organizations "in carrying on the activities referred to in paragraph" 2(6). The activities described in 2(6) are conspiratorial efforts to seize government power and set up foreign-controlled Communist totalitarian dictatorships. Nothing could be further from this kind of thing than the legal defense of deportation cases or the doing of other good deeds.

Again, section 13(f)(3) requires the Board, in determining whether an organization is a Communist-front, to consider "the extent to which its funds, resources or personnel are used to further the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2." The only objectives referred to in section 2 are the sinister ones mentioned. See *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 55-56.

Finally, as Chief Judge Bazelon also pointed out, (R. 113) the majority's construction eliminates the aid component of section 3(4). According to the majority, any

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[14] Judge Prettyman, the author of the majority opinion below, has elsewhere recognized that "almost by definition, many members of a Communist front are unsympathetic to Communist aims or Communist philosophy." *National Council of American-Soviet Friendship* v. *S.A.C.B.*, 322 F. 2d 375, 379.

organization satisfies the aid component if it does anything which the Communist Party considers to be to its advantage. Since the Party would obviously not control any other kind of organization, the two components of the definition section are reduced to one—the presence of Party control.

C. Constitutional questions

1. Vagueness

By the construction of the majority below, the aid component of section 3(4) includes any activity that may benefit the Communist Party, no matter how collaterally or intangibly. This makes the definition of a Communist-front organization so vague and comprehensive as to violate due process.

Cramp v. *Board of Public Instruction*, 368 U.S. 278, in holding an oath requirement invalid for vagueness, stated (at 286):

> "Those who take this oath must swear, rather, that they have not in the unending past ever knowingly lent their 'aid,' or 'support,' or 'advice,' or 'counsel' or 'influence' to the Communist Party. What do these phrases mean? . . . Could a lawyer who had ever represented the Communist Party or its members swear with either confidence or honesty that he had never knowingly lent his 'counsel' to the Party? Could a journalist who had ever defended the constitutional rights of the Communist Party conscientiously take an oath that he had never lent the Party his 'support'? Indeed, could anyone honestly subscribe to this oath who had ever supported any cause with contemporaneous knowledge that the Communist Party also supported it?
>
> "The very absurdity of these possibilities brings into focus the extraordinary ambiguity of the statutory language."

The "possibilities" mentioned in this passage are of the same genre as, and have no greater absurdity than, the actuality here—that legal defense of the foreign born has

been held to constitute "aid and support" to the Communist Party. Accordingly, section 3(4), as here construed, has the "extraordinary ambiguity" which *Cramp* condemns.

2. The First Amendment

Communist Party v. *S.A.C.B.*, 367 U.S. 1, held that the provisions of the Act requiring the registration of Communist-action organizations did not offend the First Amendment. The Court recognized that the provisions interfered with the rights of association of members of the Communist Party, the organization there involved. However, it found that these interests were outbalanced by the government's interest in what was considered to be a reasonable accommodation of "the exigencies of self-preservation and the values of liberty" (at 96), designed to protect the national security against what Congress could reasonably consider a dangerous, foreign-controlled conspiracy, seeking by illicit means to overthrow the government and substitute a totalitarian dictatorship under foreign domination (at 93-95). The Court expressly disclaimed, however, any possibility that the Act's registration requirements could constitutionally be applied to organizations which do not have such endangering characteristics (at 104).

This case obviously comes within the disclaimer. The First Amendment protects the right of persons to associate in petitioner. Cf. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Communist Party* v. *S.A.C.B.*, *supra*, at 90-91. It also protects petitioner's right to agitate in favor of the interests of the foreign-born, as well as its right to sponsor litigation defending those interests. Cf. *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 428-30. These were the only activities of petitioner which induced the registration order against it. It cannot rationally be found, nor was it found, that these activities, regarded by the court below as "laudable," endanger the security of the nation or are inconsistent with the maintenance of a free, democratic society. On the con-

trary, petitioner's activities promote principles of humanity and the interests of justice. Thus there is no "evil" to balance against the Act's interference with the liberties of petitioner, of those who participate in its work, and of those whom it defends.

The Board made a finding, which the court below affirmed, that petitioner is substantially controlled by the Communist Party. Even if there were grounds for this canard (see *infra*, pp. 26-34), it would not matter. There can be no rule that Communists must be prevented from engaging in "laudable" activities, or that they may not defend themselves and others in legal proceedings. And how can a "laudable" activity be dangerous because it is performed by or at the direction of Communists? As Judge Bazelon stated (R. 111), citing *DeJonge* v. *Oregon*, 299 U.S. 353, and *Scales* v. *United States*, 367 U.S. 203, "Activities protected by the first amendment cannot be restrained because of association with an organization some of whose activities are not so protected.' Because the Communist-front provisions of the Act, particularly as construed by the majority below, restrain innocent activities along with (and even more than) dangerous ones, they violate the established principle that, "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 433. See also *Shelton* v. *Tucker*, 364 U.S. 479, 488-89; *Talley* v. *California*, 362 U.S. 60.

3. Preclusion

Petitioner was found to be a Communist-front organization on the ground that it was controlled by, and was primarily operated for the purpose of aiding and supporting, the Communist Party. This finding corresponds to the section 3(4) definition of a Communist-front only if the

Communist Party was a Communist-action organization at the time of the finding against petitioner.

No evidence was introduced at petitioner's hearing to establish that the Communist Party was a Communist-action organization. Instead, the Board held that petitioner was bound by the Board's determination, made in a prior proceeding against the Communist Party, that the latter organization was an action organization (R. 24)

This preclusion of petitioner by a finding made in a proceeding to which it was not a party violates the due process principle that a deprivation of liberty may not be accomplished without affording an opportunity to contest the factual premises on which the validity of the deprivation depends. *Noto* v. *United States*, 367 U.S. 290, 299; *Renaud* v. *Abbott*, 116 U.S. 277, 288. Cf. *Kirby* v. *United States*, 174 U.S. 47.

Moreover, the finding as to the Communist Party related to April 20, 1953, the date of the order against the Party. Yet it precluded petitioner as to the nature of the Party on June 27, 1960, the date of the Board's order against petitioner. Thereby the due process error was compounded. *United States* v. *Carolene Products Co.*, 304 U.S. 144, 153; *Chastleton Corp.* v. *Sinclair*, 264 U.S. 543; *Baker* v. *Carr*, 369 U.S. 186, 214.

Accordingly, this case presents to the Court for the first time the substantial questions of whether the Act, correctly construed, authorizes such preclusion and, if so, whether the preclusion is constitutional.[15]

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[15] In the *Communist Party* case, *supra*, a bare majority held that it was premature to consider whether the registration provisions of the Act violate the privilege against self-incrimination. We ask the Court to reconsider that holding and to hold the Act invalid for the reasons stated in the dissenting opinions of Justices Douglas and Brennan.

D. Questions arising from the application of the control component

We believe that the Board's conclusory finding that petitioner was controlled by the Communist Party was derived from an unfair and hostile evaluation of the record and from irrelevant and incompetent evidence. We also believe that the court below did not fulfill its responsibility to accord petitioner a fair and adequate judicial review of the Board's findings on this subject. We ask the Court to review these issues in the interests of the fair administration of justice and in order to protect the right of association in petitioner and in other organizations which will receive similar mistreatment if the decision below is not corrected.

In order to keep within limits suitable to a petition, we will confine our demonstration to those matters on which the opinion appears to rely most heavily for sustaining the Board's control finding. Our discussion will also develop other substantial questions connected with the control component and presented by this case.

1. Lautner and the Curtailment of Cross-Examination

The opinion refers (R. 98-99) to testimony of the Attorney General's witness John Lautner, credited by the Board over the flat contradiction of Abner Green, that Green was picked to head petitioner by a decision of Lautner and one, Landy, acting for the Communist Party. This testimony was the basis for the Board's finding, of major importance to its conclusion on the control component, that Green was a "representative of the Communist Party in operating" petitioner (R. 39). The court, however, neither mentioned nor decided the two principal issues raised by petitioner in arguing that the Board erred in relying on Lautner's testimony.

(a) Lautner testified that he and Landy made their decision in 1942 (Tr. 991-95, 1095).[16] The Act requires the Board to determine the *present* character of an accused organization (see sec. 13(h) and (i)). Clearly, the fact, if it be one, that the Communist Party picked Green in 1942 to be petitioner's chief executive does not tend to prove that Green was a "representative" of the Party in June 1960.

The court below, however, not only did not discuss this issue, but failed even to mention the date of the alleged selection.

(b) On cross-examination, counsel for petitioner asked Lautner, "Where do you live?" Lautner refused to answer; the hearing examiner refused to order him to answer; the question went unanswered; and the Board refused to strike his testimony. (R. 36; Tr. 1083-87.) This was a clear denial of the right of cross-examination and constitutes reversible error. *Alford* v. *United States*, 282 U.S. 687, squarely so holds as to the exclusion of the identical question. Indeed, this case is more aggravated. For though Lautner claimed that he feared for his physical safety if he disclosed his residence, the examiner excluded questioning designed to expose his claim as insincere and preposterous (Tr. 1083-84, 1087-93). Nevertheless, the opinion below does not mention the curtailment of Lautner's cross-examination.

Lautner was a former Communist who, at the time of the hearing and for some years before, derived his income solely from his employment by the Department of Justice as a witness and "consultant" on Communism (Tr. 1795-

[16] Lautner's account was that Green was picked to succeed Novick (Tr. 991-95). Green's testimony that Lautner's story was "completely false" (Tr. 4845-46) was corroborated by unimpeachable, documentary evidence that Green was elected Executive Secretary, the top staff officer of petitioner, by petitioner's then Board of Directors in *December 1941*, succeeding not Novick, but Curt Swinburne (R. Ex. 127, 126; Tr. 4819, 4823-24; R. 38).

96, 1801-06). He had an unsavory personal history (Tr. 1824-31), which included, as he admitted, the giving of perjured testimony in a civil suit (Tr. 1827-28). The Board should not be permitted to protect such professional witnesses from cross-examination which must be permitted of all other witnesses. At the least, it would have been more seemly if the court below had distinguished *Alford*, if it thought that a distinction existed.

The curtailment of Lautner's cross-examination in itself raises a question which this Court should review. (See No. 6 of our Questions Presented.)

2. Other Lautner Testimony

The court's opinion states (R. 99), "There was direct and specific evidence that Green and Barron attended Party meetings, were advised of Party policies, and carried out these policies in the work of the Committee." The statement is a reproduction of a finding by the Board which, as its Report states, was based exclusively on testimony of Lautner (R. 48).[17] Our preceding comments therefore apply. In addition, it is revealing to quote the testimony from which the finding derived (Tr. 1004-05):

> "Q. Do you know whether or not the American Committee for the Protection of Foreign Born during the time you were a member of the Party [1929-1950—R. 75] had any connection whatsoever with the Party, speaking of the Communist Party?
>
> • • • •
>
> The Witness: Yes.
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> • • • •

[17] The Board's assertion that this testimony was "without contradiction or denial" (R. 48) is proven wrong by the Board's own later statement (R. 64): "Green further testified that the national conferences have been the only body of the American Committee that have ever set the policies of the organization; that the conferences elected the officers; and that the policies and decisions of the national conferences have been binding on the officers of the American Committee."

Q. What connection, if any, did it have?

• • • •

The Witness: The functionaries of the Protection of the Foreign Born, the top functionaries, like Abner Green and Harriet Baron, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organizations."

It is almost needless to say that Lautner did not testify as to what was said or occurred at the meetings or what were the Party policies involved. Moreover, Lautner was thoroughly unqualified to give testimony to support the finding of the Board and the court that Party policies were "carried out in the work of the Committee." For, as Lautner acknowledged on cross-examination, he never attended any of petitioner's meetings or affairs and was not acquainted with its work (Tr. 1109-10, 1138-43). It was error for the Board and the court to rely on such obviously incompetent and conclusory evidence, particularly when it came from a hostile informer in the pay of petitioner's adversary in the litigation. It was inexcusable for the court to characterize this testimony as "direct and specific evidence."

3. Area Committees

The bulk of the Board's evidentiary findings on the control component were made with respect to the Area Committees. Petitioner did not seek to rebut the testimony from which these findings derived. Instead, its position was that the Area Committees were separate and independent organizations[18] with whom it cooperated; that they elected their own officers and conducted their own activities as they saw fit; that petitioner did not control

[18] The court below misstated petitioner's position as a claim that "these local groups were autonomous" (R. 100).

them; and that petitioner was not, and could not be held, accountable for their actions and personnel. The Board, however, held that petitioner and the Area Committees constituted a single organization. (*Supra*, pp. 6-7, 12.)

This holding raised factual and legal issues which we need not explore here but which were fully briefed in the court below. It was the obligation of the court to review those issues. Instead of doing so, however, it stated that it considered it "unimportant" whether the Area Committees were parts of petitioner because "they were intermeshed with the national group, not only in policies but in operation" (R. 100).

In affirming the result reached by the Board on a theory never advanced by the Board, the court violated an elementary principle of judicial review. The court was required to reivew the findings and theories of the Board. It was not permitted to affirm the Board's order on a theory of the court's own creation. *S.E.C.* v. *Chenery Corp.*, 318 U. S. 80; 332 U.S. 194.

In any event, the court's holding raises a substantial question important to the scope and administration of the Act. We think that the Act does not authorize, nor does the Constitution permit, imposing liability on an organization for the conduct of other organizations with which it is "intermeshed"—whatever that means—but which it does not control. See No. 7 of our Questions Presented.

4. The "Thread of Communist Interest"

The opinion below asserts (R. 105) that "a prominent thread of Communist interest" ran through petitioner's activities. It then cites several matters to support the assertion.

(a) First the court states that petitioner "took vigorous positions in respect to the Gerhardt Eisler affair," although "this was not a naturalization or deportation matter," but rather a controversy concerning Eisler's "membership in

the Communist Party and his refusal to testify before the House Committee" (R. 165).

The uncontradicted evidence, however, is that petitioner represented Eisler only in his deportation case and in litigation seeking to obtain his release on bail to insure his appearance in that case, and that it also campaigned to "let Eisler go home" in view of the fact that Eisler at all times wanted to depart for Germany and was prevented only by being held for the deportation proceeding. (Tr. 5429, 5432, 5436-42; P. Ex. 200; 244, p. 2; 194, p. 3; see *United States ex rel. Doyle et al* v. *District Director*, 169 F. 2d 753.). Petitioner did *not* defend Eisler in his other legal troubles, which were not connected with his deportation case (Tr. 5433-37). Petitioner's only participation in Eisler's contempt case was the filing of an amicus brief in this Court limited to a question of interest to the foreign born—whether Eisler, as an interned enemy alien, was entitled to the rights of a prisoner of war and therefore was immune from coercive interrogation under Article 5 of the Geneva Convention on Prisoners of War. (A.G. Ex. 202, p. 2; see petitioner's amicus brief in *Eisler* v. *United States*, certiorari granted, 335 U.S. 857; removed from docket, 338 U.S. 189; writ dismissed, 338 U.S. 883.)

The court's erroneous description of the evidence as to Eisler is aggravated by its ignoring of what the Board held was an important instance of action by petitioner outside of its ostensible purposes. The Board found that petitioner "went beyond the normal defense of the foreign born by supporting Communist Party functionaries Fred Estes and James Green, both of the State of Texas," following their refusal to give evidence in deportation proceedings as to whether accused aliens were members of the Communist Party (R. 50).

The sole evidence on which the finding was based, and the only reference in the record to Estes and Green, was a news item in the January 1950 issue of petitioner's publica-

tion, *The Lamp* (P. Ex. 210, p. 2), reporting their contempt convictions.

The finding based on the news item is so preposterous as to illustrate the Board's bias.[19] The court's failure to notice the Board's unpermissible reliance on this kind of finding constituted as much a failing of its obligation of judicial review as its inaccurate statement of the evidence regarding Eisler.

(b) The court cited the following as another example of the "prominent thread of Communist interest" (R. 105):

> "The provisions of the Internal Security Act[20] which were the targets of the Committee's attacks were those which required the deportation of aliens who were or had been members of the Communist Party. The Committee maintained that these provisions were premised on political opinion and threatened the freedom of all American people to their political opinions. This, of course, is Communist doctrine, but so far as this Government is concerned the point was put at rest by the Congressional findings to which we have referred."

In like vein, the court also cited, presumably as more "Communist doctrine," petitioner's statement that three decisions of this Court "destroyed many of the democratic

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[19] The real "support" for Estes was given by the Fifth Circuit, which, as the Board's Report fails to note, reversed his contempt conviction. *Estes* v. *Potter*, 183 F. 2d 865. We have not found a report of Green's case, which, we surmise, abided the result of the *Estes* case.

[20] The opinion's reference to the Internal Security Act, the deportation provisions of which were superseded by the Immigration and Nationality Act, seemingly stems from the court's erroneous belief that petitioner's "name for the Internal Security Act of 1950" is "the Walter-McCarran Act" (R. 104-05). In fact, petitioner, like others interested in the immigration field, applied the name "Walter-McCarran Act" to the Immigration and Nationality Act. The court apparently was misled by the fact that the Internal Security Act is often called the "McCarran Act."

rights accorded non-citizens and jeopardized, thereby, the liberties of all Americans, native as well as foreign born," and were cases in which "the U. S. Supreme Court had deserted its duty to protect the Bill of Rights" (R. 106).[21]

It seems to us that these passages of the court's opinion show that the court's review of the Board's decision was affected by an irrational conception of "Communist doctrine."

(c) The last bits of the "thread of Communist interest" combine a similar approach with erroneous statements of fact.

The court stated (R. 106): "The Internal Security Act is directed also at Fascists and all sorts of totalitarians. But we do not find in this record evidence that the Committee fought in behalf of Fascist aliens."

As the court itself recognized (R. 101, 102), petitioner defended all persons who sought its help in deportation or denaturalization cases regardless of their political views (*supra*, p. 8). To the best of our knowledge and belief, the government has never sought to deport an alien on a charge that he was a fascist. During World War II, there was a brief flurry of denaturalization actions instituted against members of the German-American Bund and other Nazi or fascist sympathizers. The record does not show that any of these sought petitioner's help. Petitioner did

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[21] The three cases criticized (see P. Ex. 216) were *Carlson* v. *Landon*, 342 U.S. 524 (Justices Black, Frankfurter, Douglas, Burton dissenting); *Harisiades* v. *Shaughnessy*, 342 U.S. 580 (Justices Black and Douglas dissenting); *United States* v. *Spector*, 343 U.S. 169 (Justices Frankfurter and Jackson dissenting). In *Carlson*, Justice Black (at 548) described the majority holding as "a shocking disregard of . . . provisions of the Bill of Rights." In *Harisiades*, Justice Douglas commented (at 598), "We repudiate our traditions of tolerance and our articles of faith based upon the Bill of Rights. . . ."

take a public position against these denaturalization actions (*supra*, pp. 7-8).

The court also stated (R. 106): "The Committee campaigned for repeal of the Smith Act of 1940 and in defense of those indicted under it." The fact is that the Smith Act of 1940 is the Alien Registration Act of 1940, 54 Stat. 670. Since this was clearly anti-alien legislation, petitioner opposed its adoption and campaigned for its repeal. Petitioner did *not* campaign against the adoption or for the repeal of the sedition section of the Act or in defense of persons indicted under that section. (Tr. 5922-24.)

CONCLUSION

Certiorari should be granted and the judgment below reversed.

Respectfully submitted,

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APPENDIX A TO THE OPINION BELOW

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15960

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, RESPONDENT

On Petition for Review of Order of the Subversive Activities Control Board

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Decided December 17, 1963

Mr. Joseph Forer for petitioner.

Mr. George B. Searls, Attorney, Department of Justice, with whom *Mr. Frank R. Hunter, Jr.,* General Counsel, Subversive Activities Control Board, *Mr. Kevin T. Maroney, Mrs. Lee B. Anderson,* and *Mr. Robert L. Keuch,* Attorneys, Department of Justice, and *Messrs. Charles F. Dirlam* and *Peter P. Hanagan,* Attorneys, Subversive Activities Control Board, were on the brief, for respondent.

Mr. Edward J. Ennis filed a brief on behalf of the American Civil Liberties Union, as *amicus curiae.*

Before BAZELON, Chief Judge, PRETTYMAN, Senior Circuit Judge, and DANAHER, Circuit Judge.

PRETTYMAN, *Senior Circuit Judge*: Petitioner is before the court seeking to have set aside an order of the Subversive Activities Control Board issued June 27, 1960, requiring it to register with the Attorney General as a Communist-front organization pursuant to the provisions of the Internal Security Act, Section 7.[1] On January 8, 1962, after a petition for review had been filed, this court remanded to the Board for purposes not now relevant. The Board issued its Report on Reconsideration on March 18, 1962. That report and the original report of the Board are now before us. Oral argument was heard in October of 1962.

The American Committee for Protection of Foreign Born was organized in 1932 or 1933 and has its main offices or headquarters in New York City. Its activities have centered around "the foreign born with considerable effort and attention given to the legal and propaganda defense of individuals involved in deportation and denaturalization cases." Many of those defended have been members of the Communist Party, and many have not been. The Board also found that the Communist Party has a "continuing policy" in this area. The Board said:

> "The aims and purposes of the Party have been: (a) to seek to prevent the denaturalization and deportation of officers and members of the Party, and (b) to win the goodwill of the foreign born and obtain from them adherents to and support for the Party and for Party programs. The record also shows that it was the policy of the Communist Party to carry out and advance these aims and purposes through and by an organization separate from and not a part of the Communist Party as such."

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[1] 64 STAT. 987, 989, as amended, 50 U.S.C. § 782(4).

The Board concluded that petitioner operates to serve this twofold purpose of the Communist Party and is substantially "directed, dominated, or controlled by the Communist Party of the United States, a Communist-action organization * * * and * * primarily operated for the purpose of giving aid and support to such Communist-action organization."

In reaching the result required by the evidence in this case, we need not attempt to resolve the constitutional questions advanced by petitioner. However, in determining whether there is a "preponderance" of evidence to support the Board's conclusions, it must be kept in mind that the Subversive Activities Control Act requires the Attorney General to make a particular showing as to Communist organizations before the requiring of registration can be constitutionally upheld. "'So long as no more is involved than exercise of the rights of free speech and free assembly, [an organization] is immune to such a restriction.' [Citing *Thomas* v. *Collins*, 323 U.S. 516, 540.] The present statute does not, of course, attach the registration requirement to the incident of speech, but to the incidents of foreign domination and of operation to advance the objectives of the world Communist movement—operation which, the Board has found here, includes extensive, long-continuing organizational, as well as 'speech,' activity."[2] "The statute is not applied like a spray to all persons who hold certain ideas or who may have become tainted by brushing against ideas or people."[3]

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[2] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 90 (1961).

[3] Washington Pension Union v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 398 (D.C. Cir. 1963).

In an earlier opinion in this series of cases,[4] this court has said that, before it will sustain a finding that an organization is controlled and dominated by the Communist Party, the Government must present proof which is "specific, direct and timely." "[T]he Communist Party appears, and was declared by the Congress, [citing Sec. 2(15), Subversive Activities Control Act of 1950, 64 Stat. 989, 50 U.S.C. § 781(15)], to be a rigidly disciplined, well-organized, active organization. Its management is real, not happenstance, and its representation is definite, not whimsical. Mere membership does not establish active management or responsible representative capacity."[5]

In recent months the Supreme Court itself has inquired into the adequacy of proof of Communist infiltration before it would sanction a legislative inquiry into the membership lists of the involved organization. "The strong associational interest in maintaining the privacy of membership lists of groups engaged in the constitutionally protected free trade in ideas and beliefs may not be substantially infringed upon such a slender showing as here made by the respondent. While, of course, all legitimate organizations are the beneficiaries of these protections, they are all the more essential here, where the challenged privacy is that of persons espousing beliefs already unpopular with their neighbors and the deterrent and 'chilling' effect on the free exercise of constitutionally enshrined rights of free speech, expression, and association is consequently the more immediate and substantial."[6]

The Supreme Court has also spoken on the right of an

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[4] National Council of American-Soviet Friendship v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 375 (1963).

[5] *Idem.*

[6] Gibson v. Florida Legislative Comm., 372 U.S. 539, 555-557 (1963).

organization and "its members and lawyers to associate for the purpose of assisting persons who seek legal redress for infringements of their constitutionally guaranteed and other rights." In this regard the Court said:

> "[L]itigation * * * is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. Just as it was true of the opponents of New Deal legislation during the 1930's, for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances."[7]

With these principles in mind we turn to the case at bar. As we have noted, our petitioner devotes "considerable effort and attention * * to the legal and propaganda defense of individuals involved in deportation and denaturalization cases." Indeed this appears to be its main interest and activity. It has a constitution. It has officers and honorary officers. It holds an "Annual Conference" each year, to which any and all members of the public are welcome and in which they may participate upon payment of the registration fee. It has an executive committee, elected by the annual conference, and it has full-time, paid administration officers. It has been in continuous operation since its organization. It seems clear, and the Board found, that the active directing force in the Committee was its executive secretary, Abner Green. Second to him was his assistant, Harriett Barron. The evidence was overwhelming that the board of directors and the annual conferences were perfunctory,

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[7] N.A.A.C.P. v. Button, 371 U.S. 415, 428-430 (1963).

as such boards and conventions so frequently are in unincorporated associations, and the real direction and control were in the hands of the chief executive officer. It was clearly established that Green and Barron were members of the Communist Party.

We have discussed at length the meanings of various provisions of the Internal Security Act of 1950.[8] We will not repeat that discussion here.

We inquire first into the management, or control, interrelationship of the Committee and the Communist Party. This is clause (A) of the statutory definition of a Communist front.[9]

It is not claimed, and the Board did not find, that Green or Barron were active in the management or control of the Party. But the first "criterion" in the statute[10] includes also the extent to which the active director of the named organization is a representative of the Party. A representative, obviously, need not be a participant in the management of his principal.

There was direct and specific testimony that Green was put at the head of the Committee by authority of the Party. The witness Lautner testified that he and one Landy, both of the Nationality Groups Commission of the Party, were delegated by the Central Committee of the

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[8] Labor Youth League v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 364 (1963); National Council of American-Soviet Friendship v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 375 (1963); Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board, —— U.S. App. D.C. ——, —— F.2d —— (1963).

[9] Sec. 3(4)(A), 64 STAT. 989, 50 U.S.C. § 782(4)(A).

[10] Sec. 13(f)(1), 64 STAT. 1000, 50 U.S.C. § 792(f)(1).

Party to decide upon the leadership of the Committee for Protection of Foreign Born. They named Green, "and that decision was carried out."

Green on the witness stand flatly contradicted Lautner, but this created a problem of credibility, which was for the trier of the facts who saw and heard both witnesses. The Act provides that findings shall be supported by a preponderance of the evidence, but evidence which is not believed by the trier of the facts has no weight in that scale. Of course the fact-finder cannot be arbitrary. But in the case before us that complication does not appear to be a real one on this point, despite the claims of the Committee.

Green said that he was made head of the organization through election by an annual convention. But convention election of officers already actually selected by one person or a small group of people is a commonplace. The election by the convention does not contradict Lautner's account.

There was direct and specific evidence that Green and Barron attended Party meetings, were advised of Party policies, and carried out those policies in the work of the Committee. In its published account (Political Affairs, Feb., 1951) of its 15th National Convention, the Party recited the advice of W. Z. Foster that the Party not become a "defense organization" but should carry on defense work through "[a] separate permanent non-partisan organization devoted exclusively to this purpose". In the next section of that same publication, the Civil Rights Congress, hailed as the logical inheritor of the fighting spirit, record and experiences of the I.L.D., and our petitioner Committee, "led by the devoted and indefatigable Abner Green," were coupled for praise, and "all progressives" were called upon to support their work. The witness Lautner, who, as we have said, was a minor Party official, testified that he was elected to the credentials com-

mittee of a conference of the Committee and was put on the executive committee of the Committee.

The evidence is direct and plentiful that the Party took an active part in the organizing of the regional Committees for Protection of Foreign Born, of which there were several. The evidence is ample that the officers of the regional Committees were members of the Party, sometimes minor officers in the Party, such as district directors, and that other such Party officials participated not only in the organization of these Committees but in their programs. It is clear that Green participated in such activities. There is much discussion in this record, and here, as to whether these local groups were autonomous organizations or were integral parts of our petitioner, the national Committee. We think the point is unimportant. It is abundantly clear that, whatever the technicalities may be as to the nature of these unincorporated associations, they were intermeshed with the national group, not only in policies but in operation. The issues of *The Lamp*, the Committee publication, on file here as exhibits, amply prove this situation.

In determining Green's status as a Party representative *vel non* the Board, under the statutory direction, took into consideration the extent to which the Committee supported the Party, was supported by it, and abided its policies; *i.e.*, the other three "criteria" in Section 13(f).

Turning then to these other "criteria", evidence of support of the Committee by the Party, and the identity of the positions and policies of the Party and the Committee, is ample to support the conclusions of the Board on those features. The record is replete with instances in those respects, and they seem to have been continuous from the early 1940's to the time of the hearing before the Board in 1954. We have no difficulty with these features of the findings.

Whether the Committee was operated primarily to aid

and support the Party, and the extent to which its resources and personnel were used to further or promote the objectives of the Party, which are clause (B) of the statutory definition and the third of the "criteria", pose questions. The Supreme Court has held that "primarily" does not necessarily mean principally; it may mean merely substantially.[11]

The Committee for Protection of Foreign Born (our petitioner) undoubtedly devoted the major portion of its efforts to contesting the deportation of aliens and promoting their naturalization. It furnished counsel and material in court cases in that area, issued statements, made pleas, and in every possible way battled in this behalf. It also fought the Internal Security Act and other statutes and proposed legislation, but the major thrusts of its offensive seem to have been the naturalization and deportation features of those measures. The Committee fought in behalf of many members of the Communist Party. There is some dispute as to the proportion of the persons it aided who were Party members. But there is no dispute as to the fact that it enlisted in behalf of many non-Communists.

Obviously the naturalization of its members and the prevention of their deportation were direct aims and purposes of the Communist Party. And a more subtle factor is present. The foreign-born constitute one of the likeliest reservoirs of potential disciples for Communism in this country. Many of these people are less fearful of foreign influence or less attuned to the basic concepts of this nation than are their second and subsequent generations. The Party made an official declaration along these lines early in the 1930's. To establish itself as the champion of the foreign-born and to imprint such an image of itself on the public mind would obviously be of major bene-

[11] Board of Governors v. Agnew, 329 U.S. 441, 446 (1947).

fit to the Party. But the protection of the rights of the foreign-born is not only a laudable objective; it is a basic one in this country. This is true not only theoretically and philosophically but also historically and factually. What, then, of an organization which vigorously devotes itself to the protection of the rights of all and any foreign-born who seek its help? Is it to be held a Communist front because the ends sought are Communist aims? Of course not. But, if in espousing causes which are Communist objectives an organization does so because of Communist control and direction, is it then a Communist front? To reach an answer to this question we think we must trace the pertinent considerations from their base. The Congress found and declared as a fact that the Communist movement is a world-wide revolutionary movement whose purpose it is, by any means deemed necessary, to establish a Communist totalitarian dictatorship throughout the world. The Supreme Court has told us that we must accept as established facts these findings, and others which we shall recite, of the Congress.[12] The Congress further found that the Communist dictatorship, vested in a foreign country, operates by causing the establishment in various countries of action organizations which are controlled by that foreign power. It has been established by a process of administrative and judicial inquiry in this country that the Communist Party of the United States is such an action organization.[13] The Congress further found as a fact that these action organizations operate to a substantial extent through "fronts", which in most instances are created or used in such manner as

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[12] Galvan v. Press, 347 U.S. 522, 529 (1954); Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1 (1961).

[13] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1 (1961).

to conceal their true character and purposes, and that a result of this method is to obtain support from persons who would not extend such support if they knew the true purposes of, and the actual nature of, the control and influence exerted upon such "fronts". The Congress also found as a fact that "One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society."[14] Upon the basis of these Congressional findings, which, as we have said, we must accept, we evaluate the record before us.

In the foregoing context it is indubitably clear that any laudable, praiseworthy activity which is identified in the public mind with the Communist Party or with Communism, or is so identified in the minds of those being aided by the effort, or is identified as being within the community of policies advocated by the Party, is a benefit to and naturally an objective of the Party. The identification of itself with laudable causes would, of course, be a benefit to the Party, as it is to any organization. The identity of its prominent members with such causes is also a worthwhile project for an organization seeking power among the public. More subtle and less effective, but perhaps the only route to public acceptance available to a clandestine operator is to create a picture of a community of interest between its own causes and interests which bear public acclaim. This is indeed a subtle business, but if effectuated it would be a real and substantial aid and support to the Party. This is one of the theses of the statute. The Congress declared that the Communist movement attracts strength to itself by operating behind a facade of good deeds.

The statute does not seek the registration of an organization devoted to the protection of the rights of the

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[14] 64 STAT. 989 (1950), 50 U.S.C. § 781 (14).

foreign-born. It seeks the registration of any organization the purpose of which, under control of the Party, by any activity, laudable or otherwise, is to strengthen the power of the Communist Party in this country.

The American Committee, by constant utterances and by its public attitude on issues apart from naturalisation and deportation, vigorously identified its cause with causes of the Communist Party. One cannot read its declarations without gaining an impression that the cause of Communists threatened with deportation is the cause of all people so threatened and that Communist leaders are leading the effort on behalf of all.

The official organ of the Committee was *The Lamp*, published monthly in New York. It reflects the activities of the organization. Copies of issues from March, 1944, to January, 1954, are in the record. This paper carried current accounts of developments in cases and events in which the Committee was interested. It followed the *Harisiades* case and the *Terminal Island Four* case throughout their histories. From time to time it announced new arrests in deportation proceedings—sometimes twenty-five at a time, or an alleged total of some three hundred. It carried small news notes on the progress of deportation cases, the grant or denial of bail, and the results of petitions for habeas corpus and appeals to the courts. It announced conferences and committee meetings, the formation of special defense committees in particular cases, and the publication of booklets on special cases. The meetings of the various area Committees for Protection of Foreign Born were announced in some detail. It appealed for funds and carried strong editorials condemning what it termed "The Deportation Drive". In short, *The Lamp* was a vigorous, wel prepared, constant advocate of the rights of the foreign-born. Some of its extended campaigns were for repeal of the Walter-McCarran Act (its name for the Internal

Security Act of 1950), support of the Lehman-Celler bill, the right to bail in deportation cases, opposition of denaturalization, and the status and problems of Mexican-Americans. From time to time it announced it was currently engaged in as many as 325 deportation cases and more than 40 denaturalization cases. Its total income ran as high as $43,500 and its expenses about that much. Abner Green served a federal prison sentence for refusing to reveal the names of contributors. It carried news about the activities of organizations of nationalities—Hellenic American Brotherhood, for example.

Through all these activities runs a prominent thread of Communist interest. The Committee took vigorous positions in respect to the Gerhardt Eisler affair. Eisler was foreign-born, to be sure, but this was not a naturalization or deportation matter; quite the contrary, in fact. The controversy which swirled about Eisler concerned his membership in the Communist Party and his refusal to testify before the House Committee.[18] The provisions of the Internal Security Act which were the targets of the Committee's attacks were those which required the deportation of aliens who were or had been members of the Communist Party. The Committee maintained that these provisions were premised on political opinion and threatened the freedom of all American people to their political opinions. This, of course, is Communist doctrine, but so far as this Government is concerned the point was put at rest by the Congressional findings to which we have referred. The deportation of Peter Harisiades, which the Committee called a test case and opposed with all the resources at its command, was on the ground that he was

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[18] Eisler v. United States, 83 U.S. App. D.C. 315, 170 F.2d 273 (D.C.Cir. 1948), *cert. dismissed*, 338 U.S. 883 (1949); 84 U.S. App. D.C. 404, 176 F.2d 21 (D.C.Cir.), *cert. denied*, 337 U.S. 958 (1949).

a member of the Communist Party.[16] The Internal Security Act is directed also at Fascists and all sorts of totalitarians. But we do not find in this record evidence that the Committee fought in behalf of Fascist aliens. Indeed it expressed a hearty antagonism to adherents of that thesis. The Committee campaigned for repeal of the Smith Act of 1940[17] and in defense of those indicted under it. When, in March of 1952, the Supreme Court ruled on a group of cases involving problems of members of the Communist Party under various sections of the so-called McCarran Act, *The Lamp* said: "In a series of three opinions, the U. S. Supreme Court has made far-reaching decisions destroying many of the democratic rights accorded non-citizens and jeopardizing, thereby, the liberties of all Americans, native as well as foreign born. * * * In a statement, the ACPFB [this Committee] declared that the U. S. Supreme Court had deserted its duty to protect the Bill of Rights * * *." Of the same events *The Worker* (issue of March 16, 1952), an official organ of the Communist Party, said:

> "ANOTHER MONDAY—Supreme Court decision day—has passed and another gaping hole has been torn in the Bill of Rights by the war-thirsty Court majority.
>
> "In trampling upon the rights of foreign born non-citizens, the court has destroyed the constitutional rights of foreign-born citizens as well, and threatened the rights of the native born."

Testimony of Immigration officers was that the "bulk" of the three hundred deportation cases which the Committee at one time said it was defending involved allegations that the persons involved were members of the Communist Party. The terms used by *The Lamp*, the epithets

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[16] Harisiades v. Shaughnessy, 342 U.S. 580 (1952).

[17] 54 STAT. 670.

applied to Government officials and their activities, are in tune with the utterances and attitudes of the Communist Party, expressed by its leaders and its publications.

Thus, then, the total picture in this record, viewed in the light of the statutory definition and the supporting "criteria", is of Abner Green as the directing force in the petitioner Committee, his selection for the post by authority of the Central Committee of the Communist Party, his attendance upon policy meetings of the Party, the vigorous support of him and the petitioner Committee by the Party, the identity of the objectives of the Committee and objectives of the Party, the similarity of Committee policies and Party policies in related areas, the notable Party overtones of Committee expression, and the direct involvement of Party members in a great proportion of the Committee's direct efforts. A Communist front is not declared by the Congress to be an action group; it is declared to be a facade behind which the Party, through designated representatives and control, works to strengthen itself in this country. When all the foregoing considerations are put together it seems to us that the conclusion of the Board that the Committee, our petitioner here, was a Communist front within the terms of the statute was well founded. In the *Communist Party* case the Supreme Court told us:

> "The existence of direction, domination, or control in each instance is an issue of particular fact. The question whether in the case of a given organization such a compulsion or impulsion arises from the complex of ties which link it to a foreign government or organization that it will, because of those ties alone, adhere in its conduct to decisions made for it abroad, is one which Congress has committed, in the first instance, to an expert trier of fact. * * * Our decision in *Rochester Telephone Corp.* v. *United States*, 307 U.S. 125, is especially apposite here. * * * [W]e said: 'Investing the Commission with the duty of ascertaining "control" of one company by another,

Congress did not imply artificial tests of control. This is an issue of fact to be determined by the special circumstances of each case. So long as there is warrant in the record for the judgment of the expert body it must stand.'" [18]

Petitioner raises other points of law—the decision that the Communist Party is a Communist-action organization is not binding in this proceeding, and the registration provisions of the Internal Security Act are unconstitutional. We have ruled upon those points in other cases, to which we have referred, *supra*. Relying upon them we reject our present petitioner's contentions in those regards.

The order of the Board in this case will be

Affirmed.

BARNES, *Chief Judge*, dissenting: The Subversive Activities Control Act[1] aims to prevent a world-wide Communist conspiracy from accomplishing its purpose in the United States. §2(15). Section 3(3) defines "Communist-action organization" as an organization which "(i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement . . . ." Those objectives are "the overthrow of existing government by any means necessary and the establishment in its place of a Communist totalitarian dictatorship." *Communist Par-*

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[18] *Supra* note 13, at 40-41.

[1] 64 Stat. 987 (1950), 50 U.S.C. §§ 781 *et seq.* (1958).

ty v. *Subversive Activities Control Board*, 367 U.S. 1, 89 (1961).

Section 3(4) of the Act defines "Communist-front organization" as an organization that "(A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement . . . ." The Communist Party is a Communist-action organization. But I think the Board has not shown that the American Committee for Protection of Foreign Born "(B) is primarily operated for the purpose of giving aid and support" to the Communist Party.[2] "The findings of the Board as to the facts, if supported by the preponderance of the evidence, [are] conclusive." §14(a). But what the Act means is a question of law for the court.

Congress might have made Communist control the sole test of a "Communist-front organization." But Congress chose to include in the definition a purpose element as well as a control element. Also, Congress chose not to outlaw the Communist Party or prohibit all of its activities. Besides the objectives of overthrowing the government and establishing a dictatorship, the Party has inno-

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[2] Although Congress juxtaposed the word "substantially" in § 3(4)(A) with "primarily" in § 3(4)(B), the majority nonetheless says that "primarily" means "substantially." Majority Opinion p. 9. To support this construction of the Subversive Activities Control Act, reference is made to the Banking Act of 1933 where, in a widely different context, the word "primarily" appears alone. I think the word "primarily" in § 3(4)(B) must be given its ordinary dictionary meaning of "principally" or "chiefly."

I have not considered the Board's finding that the American Committee "(A) is substantially directed, dominated, or controlled" by the Communist Party.

cent objectives and innocent activities. These are known to include, *e.g.*, promoting public school integration. They have been shown to include contesting the deportation of aliens and promoting their naturalization. Congress did not say, and I think Congress did not mean, that a "purpose of giving aid" to a Communist-action organization in promoting an innocent objective makes an organization which it controls a Communist-front organization. I think the word "purpose" in §3(4) should be read in connection with the word "objectives" in §3(3). This context indicates that "purpose" is intended and should be understood to be limited to the purpose of aiding a Communist-action organization to advance the objectives of the world Communist movement.

The way in which the Act deals with Communist-front organizations confirms this understanding. The Act does not stop with requiring these organizations to register and furnish information. Most of the severe penalties prescribed in §§5(a) and 6(a) of the Act apply not only to members of Communist-action organizations but to members of Communist-front organizations also.[3] These sections of the Act make it "unlawful" for members of either sort of organization to hold any non-elective office or employment under the United States, or to be employed by any labor organization, or to use a passport, or even to apply for a passport. The validity of these severe penalties is not now before us. But in my opinion their severity shows that Congress had no intention of inflicting them on otherwise innocent people merely because of membership in otherwise innocent organizations that the Communist Party uses to advance an innocent aim.

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[3] Section 5(a)(1)(D) prohibits employment in defense facilities of members of Communist-action organizations only. See also §§ 6(b), 7(d)(4), and 8.

Moreover a limited interpretation of the term Communist front is necessary if serious constitutional questions are to be avoided. The *Communist Party* case determines that constitutional rights including freedom of speech are not violated by enforcing the registration and information requirements of the Act against organizations that are primarily operated for the purpose of overthrowing the government and establishing a totalitarian dictatorship. 367 U.S. at 104-05. But it is quite doubtful that these same requirements may constitutionally be enforced against an organization that is not shown to have the same or similar purposes. It is even more doubtful that the severe penalties of §§5(a) and 6(a) may constitutionally be inflicted on the members of such an organization. Although the last question is not now before us, it is bound to arise if "Communist-front organization" is finally given the broad interpretation which this court now gives it.

Activities protected by the first amendment cannot be restrained because of association with an organization some of whose activities are not so protected. In *DeJonge* v. *Oregon*, 299 U.S. 353 (1937), the Supreme Court held that although the Communist Party was engaged in unlawful activities, punishing a member for helping the Party conduct a meeting that had only lawful purposes violated his constitutional right of free speech. The Court said:

> The holding of meetings for peaceable political action cannot be proscribed. . . . The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. [299 U.S. at 365.]

In *Scales* v. *United States*, 367 U.S. 203 (1961), the Court

sustained the constitutionality of a broad clause of the Smith Act directed against members of the Communist Party by interpreting the clause as intended to apply only to those members who intend to engage in or further the Party's sinister activities. The Court said: "Thus the member for whom the organization is a vehicle for the advancement of legitimate aims and policies does not fall within the ban of the statute . . . ." 367 U.S. at 229.[4]

This court does not directly express a conclusion with regard to the Committee's purpose. It does say that the Board's conclusion that the Committee "was a Communist front within the terms of the statute was well founded." Majority Opinion p. 15. But the court's opinion is devoted almost entirely to the subject of control by the Communist Party. The otherwise lawful purposes of an organization do not become unlawful simply because it is controlled by an organization that has the same lawful purposes together with other purposes that are unlawful. Neither the Board nor the court says the preponderance of the evidence supports a conclusion that the Committee is primarily operated for the purpose of aiding the Communist

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[4] Cases such as *American Communications Ass'n* v. *Douds*, 339 U.S. 382 (1950); *Killian* v. *United States*, 368 U.S. 231 (1961); *Galvan* v. *Press*, 347 U.S. 522 (1954); *Rowoldt* v. *Perfetto*, 355 U.S. 115 (1957); *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469 (1963), are not to the contrary. The latest expression of Supreme Court doctrine makes plain that certain civil sanctions may be imposed based on evidence of a "meaningful association" with the Communist Party characterized by awareness of its "distinct and active political nature"; but such sanctions may not rest on evidence of an "association" with the Party—much less with one of its alleged front organizations—characterized by a belief that it is "a group solely trying to remedy unsatisfactory social or economic conditions, carry out trade union objectives, eliminate racial discrimination, combat unemployment or alleviate distress and poverty." *Gastelum-Quinones* v. *Kennedy*, *supra* at 473-74.

Party to advance the world Communist movement's objectives of overthrowing the government and establishing a totalitarian dictatorship. It seems to me clear that the preponderance of the evidence does not support such a conclusion. I would therefore set aside the Board's order.

I think the government failed to prove by a preponderance of the evidence that the Committee is primarily operated for the purpose of giving aid and support to the Communist Party in advancing *any* objective, even an innocent one.[5] As the court points out, both the American Committee and the Communist Party attacked and attempted to change our government's policy toward the foreign born, and defended individuals, many of them Communists, who were affected by the policy. But as the court also says, the Committee "enlisted in behalf of many non-Communists." Majority Opinion p. 9. I think the evidence does not show that the Committee was primarily operated for the purpose of giving aid to the Party in advancing any objective, rather than for the purpose of advancing the Committee's own objectives which the Party shared. To treat the Party's control of the Committee, and the overlapping of their memberships and objectives, as proving that the Committee was primarily operated for the purpose of aiding the Party would read the element of purpose out of the Act and make it unnecessary for the government to prove anything more than control.[6]

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[5] The Board concluded that the Committee operates to serve a two-fold purpose of the Party: "(a) to seek to prevent the denaturalization and deportation of officers and members of the Party, and (b) to win the goodwill of the foreign born and obtain from them adherents to and support for the Party and for Party programs." Report and Order of the Board at 21 (June 27, 1960).

[6] Although conduct may sometimes show purpose, I think

Our first opinion in *Communist Party* v. *Subversive Activities Control Board*, 96 U.S.App.D.C. 66, 109-10, 223 F.2d 531, 574-75 (1954), states that the Board had found secret practices of the Party to have been engaged in for the purpose of concealing the Party's true nature and promoting its objectives, whereas the Party contended its purpose in using the secret practices had been to protect Party members from oppression. We said:

> This question, whether the secret practices of the Party are for the purpose of protecting the liberties of the members or are for the purpose of promoting the objectives of the Party, is a nebulous one. The two purposes may well overlap. In so far as protection of its members from public identification as Communists also promotes the objectives of the Party, both purposes could exist together. In a doubtful situation such as that on this point, we strike the finding as to purpose. [96 U.S.App.D.C. at 110, 223 F.2d at 575.]

I think we should strike the finding as to purpose in the present case. In the former case, the finding as to purpose was a subsidiary one and we affirmed the Board's order without it. In the present case, the American Committee's purpose is a crucial question. But this should not lead us to abandon the principle we formerly adopted.

When the control and the purpose that show an organization to be a Communist front are both established, its lawful activities do not insulate the organization and its members from the sanctions directed against fronts. But law-

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the Committee's ambiguous conduct in this case does not support an inference of any purpose other than protection of the foreign born. In the *Communist Party* case, on the other hand, the proof included "long-continued, totally unwavering identity of policy lines" between the Party and the Soviet Union, including identical positions on "forty-five major international issues during thirty years." 367 U.S. at 59, 61.

ful activities cannot, in my opinion, make an organization a front.[7] A Communist-front organization is like a man with a false beard. The Subversive Activities Control Act directs us to remove the beard but not without proof that it is false.

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[7] This court illustrates what seems to me its misunderstanding of the law by characterizing as "of course . . . Communist doctrine" the American Committee's position that laws requiring deportation of present or former Communist aliens "were premised on political opinion and threatened the freedom of all American people to their political opinions." Majority Opinion p. 18. This view of the deportation provisions is held by many loyal Americans. See also the Board's similar argument:

> "Even Abner Green's testimony that in defending Eisler in the deportation proceedings [the American Committee] was supporting the Bill of Rights, was consistent with the position of the Communist Party that 'To advocate action against Communists is to destroy the Bill of Rights.'" Report and Order of the Board at 29.

APPENDIX B

The Judgment Below

(Filed December 17, 1963)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,960

September Term, 1963

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, *Respondent.*

On Petition for Review of Order of the
Subversive Activities Control Board

Before: BAZELON, *Chief Judge,* PRETTYMAN, *Senior Circuit Judge,* and DANAHER, *Circuit Judge.*

Judgment

This case came on to be heard on the record from the Subversive Activities Control Board, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the order of the Subversive Activities Control Board on review in this case is affirmed.

Per Senior Circuit JUDGE PRETTYMAN.

Dated: December 17, 1963.

Separate dissenting opinion by Chief Judge Bazelon.

APPENDIX C

Statute Involved

Pertinent provisions of the Subversive Activities Control Act of 1950 (which is Title I of the Internal Security Act of 1950), as amended, 64 Stat. 987, 50 U.S.C. 781, et seq., are as follows. (The Act's section numbers are followed by the appropriate section numbers of 50 U.S.C. in brackets.)

Sec. 2 [781]. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that—

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of the world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6) of this section, such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts," which in most instances are created and maintained, or used, in such manner as to conceal the facts as

to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of Communist members, representatives, and agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement.

(9) In the United States those individuals who knowingly and wilfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

(10) In pursuance of Communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above, already caused the establishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The agents of Communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

(12) The Communist network in the United States is inspired and controlled in large part by foreign agents who are sent into the United States ostensibly as attaches

of foreign legations, affiliates of international organizations, members of trading commissions, and in similar capacities, but who use their diplomatic or semi-diplomatic status as a shield behind which to engage in activities prejudicial to the public security.

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the

existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

Sec. 3 [782]. For the purposes of this title—

* * * * *

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist-action organization" means—

(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; and

(b) any section, branch, fraction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

* * * * *

Sec. 5 [784]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title, is registered or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful—

(1) For any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(A) in seeking, accepting, or holding any non-elective office or employment under the United States, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) to hold any nonelective office or employment under the United States; or

(C) in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(D) if such organization is a Communist-action organization, to engage in any employment in any defense facility; or

(E) to hold office or employment with any labor organization, as that term is defined in section 2(5) of the National Labor Relations Act, as amended (29 U.S.C. 152), or to represent any employer in any matter or proceeding arising or pending under the Act.

(2) For any officer or employee of the United States or of any defense facility, with knowledge or notice that such organization is so registered or that such order has become final—

(A) to contribute funds or services to such organization;

* * * * *

(b) The Secretary of Defense is authorized and directed to designate and proclaim, and from time to time revise, a list of facilities, as defined in paragraph (7) of section 3

of this title, with respect to the operation of which he finds and determines that the security of the United States requires the application of the provisions of subsection (a) of this section. The Secretary shall promptly notify the management of any facility so listed; whereupon such management shall immediately post conspicuously, and thereafter while so listed keep posted, notice of such designation in such form and in such place or places as to give reasonable notice thereof to all employees of, and to all applicants for employment in, such facility. Such posting shall be sufficient to give notice of such designation to any person subject thereto or affected thereby . . .

Sec. 6 [785]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title is registered, or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful for any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or

(2) to use or attempt to use any such passport.

* * * * * *

Sec. [786].

* * * * *

(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

* * * * *

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be

prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

(1) The name of the organization and the address of its principal office.

(2) The name and the last-known address of each individual who is at the time of filing of such registration statement, and of each individual who was at any time during the period of twelve full calendar months next preceding the filing of such statement, an officer of the organization, with the designation or title of the office so held, and with a brief statement of the duties and functions of such individual as such officer.

(3) An accounting, in such form and detail as the Attorney General shall by regulations prescribe, of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full calendar months next preceding the filing of such statement.

* * * * *

(5) In the case of any officer or member whose name is required to be shown in such statement, and who uses or has used or who is or has been known by more than one name, each name which such officer or member uses or has used or by which he is known or has been known.

(6) A listing, in such form and detail as the Attorney General shall by regulation prescribe, of all printing presses and machines including but not limited to rotary presses, flatbed cylinder presses, platen presses, lithographs, offsets, photo-offsets, mimeograph machines, multigraph machines, multilith machines, duplicating machines, ditto machines, linotype machines, intertype machines, monotype machines, and all other types of printing presses, typesetting machines or any mechanical

devices used or intended to be used, or capable of being used to produce or publish printed matter or material, which are in the possession, custody, ownership, or control of the Communist-action or Communist-front organization or its officers, members, affiliates, associates, group, or groups in which the Communist-action or Communist-front organization, its officers or members have an interest.

(e) It shall be the duty of each organization registered under this section to file with the Attorney General on or before February 1 of the year following the year in which it registers, and on or before February 1 of each succeeding year, an annual report, prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the same information which by subsection (d) is required to be included in a registration statement, except that the information required with respect to the twelve-month period referred to in paragraph (2), (3), or (4) of such subsection shall, in such annual report, be given with respect to the calendar year preceding the February 1 on or before which such annual report must be filed.

(f) (1) It shall be the duty of each organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records and accounts of moneys received and expended (including the sources from which received and purposes for which expended) by such organization.

* * * * * *

Sec. 9 [788]. (a). The Attorney General shall keep and maintain separately in the Department of Justice—

* * * * * *

(2) a "Register of Communist-Front Organizations", which shall include (A) the names and addresses of all Communist-front organizations registered under section 7, and (B) the registration statements and annual reports filed by such organizations thereunder.

(b) Such registers shall be kept and maintained in such manner as to be open for public inspection . . .

* * * * * *

Sec. 10 [789]. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or determining that it is a Communist-infiltrated organization, or for any person acting for or on behalf of any such organization—

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of interstate or foreign commerce, any publication which is intended to be or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name or the organization appearing in lieu of the blank: "Disseminated by ....., a Communist organization"; or

(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by ....., a Communist organization."

Sec. 11 [790]. (a) Notwithstanding any other provisions of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7

or determining that it is a Communist-infiltrated organization.

(b) No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

* * * * *

Sec. 13 [792]. (a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this title is in fact required to register under such section, he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

* * * * *

(f) In determining whether any organization is a "Communist-front organization", the Board shall take into consideration—

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

(1) that an organization is a Communist-action organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order requiring such organization to register as such under section 7 of this title; . . .

* * * * * *

Sec. 14 [793]. (a) The party aggrieved by any order entered by the Board under subsections (g), (h), (i), or (j) of section 13, or subsection (f) of section 13A, may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction

of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides. The findings of the Board as to the facts, if supported by the preponderance of the evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence shall be conclusive, and its recommendations, if any, with respect to action in the matter under consideration. . . .

* * * * *

Sec. 15 [784] (a) If there is in effect with respect to any organization or individual a final order of the Board requiring registration under section 7 or section 8 of this title—

(1) such organization shall, upon conviction of failure to register, to file any registration statement or annual report, or to keep records as required by section 7, be punished for each such offense by a fine of not more than $10,000, and

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not more than $10,000, or

imprisonment for not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

(b) Any individual who, in a registration statement or annual report filed under section 7 or section 8, willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall upon conviction thereof be punished for each such offense by a fine of not more than $10,000, or by imprisonment for not more than five years, or by both such fine and imprisonment. For the purposes of this subsection—

(1) each false statement wilfully made, and each willful omission to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall constitute a separate offense; and

(2) each listing of the name or address of any one individual shall be deemed to be a separate statement.

(c) Any organization which violates any provision of section 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000. Any individual who violates any provision of sections 5, 6, or 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000 or by imprisonment for not more than five years, or by both such fine and imprisonment.

Sec. 16 [795]. Nothing in this title shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, by the Board under this title.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statute involved	3
Statement	3
1. Control by the Communist Party	3
2. Aid and support of the Communist Party	7
Argument	9
Conclusion	18

CITATIONS

Cases:	
Alford v. *United States*, 282 U.S. 687	17
American Communications Assn. v. *Douds*, 339 U.S. 382	15
American Power Co. v. *Securities and Exchange Commission*, 329 U.S. 90	13
Burroughs v. *United States*, 290 U.S. 534	10
Communist Party v. *Subversive Activities Control Board*, 367 U.S. 1	9, 10, 11, 12, 13, 14, 15, 16, 17
Electric Bond & Share Co. v. *Securities and Exchange Commission*, 303 U.S. 419	9
Hansberry v. *Lee*, 311 U.S. 32	14
Moyer v. *Peabody*, 212 U.S. 78	14
Sunshine Coal Co. v. *Adkins*, 310 U.S. 381	13
United States v. *Harriss*, 347 U.S. 612	10
Veterans of the Abraham Lincoln Brigade v. *Subversive Activities Control Board* (C.A.D.C.), No. 13,174, decided Dec. 17, 1963	13
Constitution of the United States, Amendment I	12

727-013—64——1

Statutes:

Subversive Activities Control Act, 50 U.S.C. 781 *et seq.*:

	Page
§ 2(7)	11, 12
§ 3(2)	6, 16
§ 3(3)	10, 13
§ 3(4)	10, 12, 13, 16
§ 13(b)	15

Miscellaneous:

Restatement, *Judgments* (1942), § 86	14

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 909

AMERICAN COMMITTEE FOR THE PROTECTION OF THE FOREIGN BORN, PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A pp. 1–23) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on December 17, 1963, and the petition for a writ of certiorari was filed on March 12, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The Subversive Activities Control Act of 1950 provides for the registration of any "Communist-front

organization" which is defined (Section 3(4)) as an organization "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Petitioner was found by the Subversive Activities Control Board to be controlled by, and to be operated primarily to give aid and support to, the Communist Party, which the Board had previously found to be a Communist-action organization. The questions presented are:

1. Whether the provisions of the Subversive Activities Control Act of 1950 providing for the registration of "Communist-front" organizations violate the First Amendment.

2. Whether the aid component of Section 3(4) is satisfied by evidence that petitioner aids and supports the Communist Party by peaceful activities, like participating in litigation and, if so, whether this renders the statute unconstitutionally vague under the due process clause of the Fifth Amendment.

3. Whether the Board violated the due process clause or the Act by refusing to allow petitioner to relitigate whether the Communist Party was a Communist-action organization.

4. Whether the Board erred, with regard to the control component of Section 3(4), either in making its findings of fact or in ruling on appropriate cross-examination of a government witness.

STATUTE INVOLVED

The pertinent provisions of the Subversive Activities Control Act, 50 U.S.C. 781, *et seq.*, appear in Appendix C to the petition.

STATEMENT

The Attorney General began this proceeding by filing a petition with the Subversive Activities Control Board for an order requiring petitioner to register under the Subversive Activities Control Act as a Communist-front organization. On June 27, 1960, the Board issued a Report and Order determining petitioner to be a Communist-front organization and ordering it to register. The court of appeals upheld the Board's order.[1]

1. *Control by the Communist Party.*—a. Petitioner's constitution provides that it shall be a "non-membership" body (R. Ex. 88).[2] Consequently, its annual conferences are attended by delegates from various organizations and any interested members of the general public (Tr. 4873–4875, 2462–2465, 2489). Between conferences, the organization is run by the executive secretary.

From December 1941 until his death in 1959, the executive secretary and dominant figure was Abner

[1] The court of appeals initially had remanded the case to the Board for consideration of additional evidence and the Board thereafter filed a Report on Reconsideration, which is not relevant to the questions raised by the petition for certiorari.

[2] Since the Attorney General was the petitioner before the Board, the government's exhibits are designated as "P. Ex." Exhibits introduced by the present petitioner, the respondent before the Board, are designated as "R. Ex."

Green. John Lautner testified that early in 1942, when he was a functionary of the Communist Party, he and another Party functionary, Avro Landy, were assigned by the Party to decide whether Irving Novick should be replaced by Green as the leader of the Committee; that Green and Novick were both Party members and subject to Party discipline; and that after a meeting of Lautner and Landy with Green and Novick at Communist Party headquarters in New York, they decided that Green should be the head (Tr. 991–996). Lautner said that Green attended the 1948 Convention of the Communist Party (Tr. 1007), and that he saw him in the Party building on numerous occasions between 1948 and 1950, when Lautner left the Party (Tr. 1094–1095). He also testified that he had known Harriet Barron, who was administrative secretary of the Committee from 1945 or 1946 through the time of the hearing in 1955, as a Party member (Tr. 1013). According to Lautner, petitioner's leaders, including Green and Miss Barron, "attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organization" (Tr. 1005).[3]

On the basis of this evidence, the Board found that Green and Miss Barron were members of the Com-

[3] In addition, Dorothy Strange, who was identified as a Party member (Tr. 3161–3163), held the office of naturalization aid director of the Committee from 1948 until the position was abolished in 1952 (Report 16).

munist Party, that Green had been the leader of the Committee pursuant to a decision of the Communist Party, and that Green and Miss Barron controlled the national organization as representatives of the Party (Report 16, 49–50).[4]

b. In addition to the national office in New York, local organizations functioned in other places under names like the "New England Committee for Protection of the Foreign Born." The official organ of the American Committee, *The Lamp,* which was edited by Green, reported in detail on these committees (P. Exs. 24, 30, 35). It, as well as other publications of the American Committee, frequently listed the addresses of the local committees under the heading of "American Committee for Protection of Foreign Born," designating the local offices simply as "Mid-West," "North-West," etc. (P. Exs. 19, 56, 166; R. Exs. 84, 197).

The American Committee initiated the organization of the Mid-West and New England Committees (Tr. 5136–5138, 5144, 4079–4086, 6955–6956, 6962) and the reorganization of the Los Angeles Committee (Tr. 2377, 6869). The American and local committees worked intimately together. The local committees sent "delegates" to the annual conferences of the American Committee (Tr. 2462–2465, 2489). The New England and Los Angeles Committees published leaflets urging contributions to the American Committee (R. Ex. 22, 67).

[4] There was evidence of some contributions by the Party and Party officials to petitioner, but the organization seems to have drawn most of its financial support from the general public and interested organizations (Report 40, 46).

If a problem arose about some person in Chicago, which could not be handled by mail, Green sent him the name and address of the Mid-West Committee (Tr. 5131). The Northern California Committee handled the case of Dr. Krishna Chandra, but the American Committee obtained counsel to represent him (R. Ex. 22; Tr. 6568–6569). Green made numerous trips to visit the local committees (Tr. 2377, 6559–6560, 6869, 6955–6956, 6962).

The Board found that the "area or local committees are associated together for joint action on particular subjects. Together they constitute a voluntary association and one organization within the meaning of the term 'organization' set forth in section 3(2) of the statute" (Report 12).[5]

The "local" committees, like the national office, were run by an "executive secretary." The Board found that the executive secretaries of the Northwest, Western Pennsylvania, New England, Michigan, and Los Angeles Committees were members of the Communist Party (Report 16, 18–20). It also found that the treasurer of the Northwest Committee and the administrative secretary of Michigan were Party members. These findings were based on the testimony of witnesses who heard admissions of Party membership, sat in Party meetings with the persons in question, had Party business or attended Party

[5] Section 3(2) provides that "The term 'organization' means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects."

schools with them (Tr. 1584–1588, 2980–2986, 3115, 3124, 3128, 5193, 344, 353–354, 748–749, 800–801, 803–809, 1333–1335, 1528–1529, 1533, 1560, 2447, 2701, 5225). The organization of the Northwest Committee resulted from discussions in Communist Party meetings in Seattle about the need for a local branch of the American Committee to defend Party members (Tr. 1584, 1586–1588, 2980–2984, 5179). The executive secretary of the Northwest Committee was assigned to the post by a local Party official (Tr. 1588).

The Board concluded on the basis of this evidence that (Report 20):

> [T]he effective management, direction, and supervision of the local branches of [petitioner] are substantially and primarily performed by and are under the control of members and representatives of the Communist Party. In view of our findings *supra* as to the leadership of the national organization it follows that the entire organization (national and locals) is effectively under the management, direction and supervision, and controlled by members and representatives of the Communist Party.

2. *Aid and Support of the Communist Party.*—Petitioner's major activities are the defense of foreign-born persons in deportation and denaturalization cases and efforts to have legislation in this area repealed or amended. While petitioner has defended many persons not charged with membership in the Communist Party, a large part, if not a majority, of the cases in which it participated, did involve Party members. For example, it defended such important Party

leaders as Alexander Bittelman, Jack Stachel, John Williamson, and four members of the Party's national committee (Tr. 1050–1053; P. Exs. 16, 19; Report 44–45). Green testified that between 1948 and 1950 the Committee participated in more than 200 cases each year which he termed "political" (Tr. 6721, 6742). Four senior Immigration and Naturalization officers testified that of the 300 or more persons named by petitioner as threatened with deportation in a leaflet issued in 1950 (R. Ex. 19), a large proportion were charged with Party membership or similar activities (Tr. 3394–3509, 3510–3675, 3776–3855). Petitioner states (Pet. 8, note 6) that it has litigated 20 cases in this Court. Of the 20, all but two involved charges of Party membership, membership in an organization advocating violent overthrow of the Government, or similar activity.

In addition, petitioner engaged in publicity campaigns against deportation and denaturalization of members of the Communist Party. For example, in 1951, Green wrote an article as the Committee's executive secretary, condemning this Court's approval of certain deportation orders based on past membership in the Communist Party (P. Ex. 169). In 1953, petitioner circulated a booklet written by Green attacking the "rotten frameup of the Rosenbergs" as caused by anti-Semitism, and the prosecution of labor leaders under the Taft-Hartley Act (R. Ex. 191, p. 47).

The Board found that petitioner outside the field of the foreign born "as well as in its views and policies in the field of the foreign born has paralleled the

views and policies of the Communist Party and has not in any instance deviated therefrom. We find that the clear preponderance of the evidence establishes that the purposes of [petitioner] have been to aid and support the Communist Party" (Report 38).

ARGUMENT

The three issues in this case (see p. 2 above) involving the constitutionality and interpretation of the registration provisions[6] of the Subversive Activities Control Act are obviously of importance in administering the Act. However, we submit that further review on these issues is not necessary since the decision below was correct. The other, evidentiary issues raised by petitioner plainly do not warrant consideration by this Court under the well-established rule that review of the findings of administrative agencies is for the courts of appeals.

1. The registration provisions of the Act do not violate the First Amendment. In *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 88, 105, this Court upheld the registration provisions of the Subversive Activities Control Act as applied to Communist-action organizations. The Court reasoned that the constitutionality of the provisions depended on "the magnitude of the public interests which the registration and disclosure provisions are designed to

[6] Just as in the *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 70–81, the restrictions resulting from membership in an organization required to register are not before the Court. See also *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U.S. 419.

protect and in the pertinence which registration and disclosure bear to the protection of these interests" (*id.* at 93); that Congress had found that the world-wide Communist movement controls clandestine Communist-action organizations in the United States which have the objective of overthrowing the government by force if need be; that these findings are not irrational and must be accepted by the courts (*id.* at 93–95); that this Court has upheld federal statutes providing for registration or disclosure of associations which were "a threat to public safety and to the effective, free functioning of our national institutions" in *Burroughs* v. *United States*, 290 U.S. 534, and *United States* v. *Harriss*, 347 U.S. 612 (*Communist Party* v. *Subversive Activities Control Board*, 367 U.S. at 97–99); and that, as in those cases, the registration provisions in the 1950 Act were a rational means of dealing with a serious problem (*id.* at 102).

This reasoning equally applies to Communist-front organizations. Section 3(3) of the Act defines a "Communist-action organization" as one controlled by the foreign government controlling the world Communist movement and operating to advance the objectives of that movement including overthrow of the United States government. Section 3(4) defines a Communist-front organization as controlled by a Communist-action organization and operated primarily to give aid and support to that organization. Thus, Communist-front organizations are an integral part of the world Communist movement. They are controlled by the world Communist movement and carry out its objectives through Communist-action organizations in the

United States. As Congress stated in its findings in the Act, Communist-action organizations, in attempting to overthrow existing governments by force if necessary (Section 2(7)):

> operate to a substantial extent through organizations, commonly known as "Communist fronts", which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

This Court specifically relied on this finding in determining that Communist-action organizations present a serious danger to America security. 367 U.S. at 94.

Petitioner contends (Pet. 22–23) that its activities are not illegal. Under the Board's findings, which the court of appeals upheld, the petitioner here is purposefully carrying out the work of the world Communist movement and promoting its ultimate aim of violent overthrow by trying to keep members of the Communist Party within the United States and by supporting the Party's general thesis that it is being persecuted. As this Court recognized in the *Communist Party* case, organizations can act on behalf of the world Communist movement and promote its objective of overthrowing the government of the

United States, without presently committing any illegal activities. 367 U.S. at 56. Since the Act is a regulatory rather than a penal statute (*ibid.*), Congress can, consistent with the First Amendment, provide for disclosure of petitioner's officers and members just as it could as to the Communist Party itself.

2. a. Petitioner argues (Pet. 18–22), and the dissent below agreed (Pet. App. A, pp. 18–21), that the aid component of the statute—which requires proof that the organization "is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *"—is not satisfied by proof of activities directed toward innocent objectives of the Communist-action organization. However, the objectives of petitioner in attempting to prevent deportation and denaturalization of Party members were only innocent in the immediate case. The ultimate objectives of the Party members running the organization were the same objectives as that of the Party as a whole—*i.e.*, overthrow of the government. This goal would obviously be helped by allowing Party leaders and members to remain in the United States.

Moreover, the language of the statute is inconsistent with petitioner's contention. Section 3(4) in terms applies to all organizations primarily operated to give aid and support to a Communist-action organization regardless of the nature of the aid and support. Moreover, Section 2(7) of the Act states that "Communist fronts" conceal the facts as to their true character and purposes, so as to get support from

persons who would not extend support if they knew the true purposes and nature of the control and influence exerted upon them. No organization could function as a "front" if it advocated the Communist objectives of violent overthrow of the government.

Of course, an organization is not a Communist-front merely because the ends sought are also those of the Communist Party; on the other hand, it is a Communist-front if it espouses those causes because of Communist direction and control. If the organization takes its course, not because of independent conviction, but by reason of substantial direction or control by the Party and for the purpose of giving aid and support to the Party, then it is a Communist-front organization within the meaning of the Act. *Veterans of the Abraham Lincoln Brigade* v. *Subversive Activities Control Board,* C.A.D.C., No. 13,174, decided December 17, 1963.

b. This interpretation of the statute does not violate due process because of vagueness. The aid component of Section 3(4) is no more general than the analogous objectives component of Section 3(3), and this Court rejected the contention as to the latter without discussion in the *Communist Party* case. Moreover, the Court has frequently sustained general statutory provisions in regulatory statutes on the ground that Congress can properly leave their application to expert administrative agencies. *American Power Co.* v. *Securities and Exchange Commission,* 329 U.S. 90, 104–105; *Sunshine Coal Co.* v. *Adkins,* 310 U.S. 381, 399–400.

3. Petitioner was not denied due process because the Act does not allow it to relitigate the question whether the Communist Party is a Communist-action organization. This Court has held that "due process of law depends on circumstances. It varies with the subject-matter and the necessities of the situation." *Moyer* v. *Peabody*, 212 U.S. 78, 84. The tortuous history of the litigation in the *Communist Party* case (see 367 U.S. at 19–22) demonstrates the total impracticability of requiring in each case involving Communist-front organizations, the relitigation of the status of the Party as a Communist-action organization.

Moreover, in the litigation resulting in the final order requiring it to register, the Communist Party may be fairly said to have represented the organizations which it controls. As this Court stated in *Hansberry* v. *Lee*, 311 U.S. 32, 42–43, "It is familiar doctrine of the federal courts that members of a class not present as parties to the litigation may be bound by the judgment where they are in fact adequately represented by parties who are present * * *, or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter." Accord, Restatement, *Judgments* (1942), § 86. Regardless of the rule in the absence of statute, at the least Congress' determination to have the Communist-action organization alone litigate its own character under the Act is not so unfair as to violate due process.

Petitioner suggests (Pet. 25) that they were entitled to relitigate the Party's status since the Board's finding related to 1953 and has become stale over the past decade. The non-Communist affidavit provision in the Labor Management Relations Act applied specifically to all members of the Communist Party. This Court upheld its constitutionality despite the fact that only Congress could remove the Party from the provisions of the statute. *American Communications Assn.* v. *Douds*, 339 U.S. 382. Similarly, Congress could reasonably decide that all organizations which are found to satisfy the standards of the Subversive Activities Control Act and refuse to register should continue under the disabilities of the Act because the Communist movement is a grave danger to national security and because its operations are extremely difficult to trace because of its secret and conspiratorial nature.

In any event, Congress has provided a means by which an organization can relitigate its status under the Act. Section 13(b) allows an organization registered under the Act to apply to the Attorney General as often as once a year to cancel its registration and, if he refuses, the organization "may petition the Board for a redetermination of its amenability to the registration requirements of the Act, pursuant to a hearing which, again, is subject to judicial review." *Communist Party* v. *Subersive Activities Control Board, supra,* 367 U.S. at 87. As this Court stated in the *Communist Party* case (*ibid.*), the Act offers "adequate means of relief" "[i]f the Party should at

any time choose to abandon" the activities which made it subject to the Act.

4. a. Petitioner contends (Pet. 28–34) that the Board erred in its evaluation of the evidence concerning control of petitioner by the Communist Party. The short answer to this contention was given by this Court in answer to a similar argument in the *Communist Party* case (367 U.S. at 69):

> We see no reason why still another court should independently reappraise the record. We have declined to do this in the case of other agencies as to whom reviewing power on the facts has been vested in the Courts of Appeals, and we find no purpose to be served in departing now from this settled policy of appellate review.

Here, the court of appeals, applying particularly strict standards (see Pet. App. A, p. 4), carefully reviewed the evidence. It found, as the Statement above (pp. 3–7) shows, that there was ample evidence for the Board to find that petitioner's national organization was headed by members of the Communist Party; that the local committees were "associated together for joint action" and therefore constituted a single "organization" as defined in the Act (Section 3(2)); that the local committees were run by Party members; and that, consequently, petitioner was "substantially directed, dominated, or controlled by a Communist-action organization" (Section 3(4)).[7]

[7] Petitioner contends (Pet. 27) that witness Lautner's testimony that he and another member of the Communist Party picked Party member Abner Green to head petitioner is irrelevant because this event occurred in 1942. This Court, however, rejected a similar contention in the *Communist Party* case con-

b. Petitioner's contention (Pet. 27–28) that the Board erred in refusing to allow cross-examination of witness Lautner as to his place of residence does not warrant further review. *Alford* v. *United States*, 282 U.S. 687, upon which petitioner relies, does not make refusal to allow cross-examination as to a witness' residence prejudicial error regardless of circumstances. The rule on such a question, as with all evidentiary rulings by the trier of fact, was stated in the *Communist Party* case in discussing a far more serious issue (367 U.S. at 29): "Wide discretion would be left to a trial judge and not less must be left to an agency like the Board in a matter of this kind—a matter of adjusting the process of inquiry to the exigencies of a particular situation as they appear to administrators immediately acquainted with the course of the proceedings."

Here, Lautner testified that his life had been threatened (Tr. 1835). The cross-examination, which petitioner says was "designed to expose his claim as insincere" (Pet. 27), did not include questions concerning his receipt of threats, but was instead limited to argumentative questions like, "As a matter of fact, the reason that you gave for refusing to answer my question is a complete invention which you have made up to glamorize and dramatize yourself, isn't that true?" (Tr. 1087–1092). In these circumstances, the Board did not abuse its broad discretion in refusing

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cerning evidence of events which occurred in many instances long before 1942. 367 U. S. at 69. Moreover, the evidence before the Board showed that Green had continued to represent the Party from 1942 to the time of the hearing in 1954.

to allow this question. But even if erroneous, such refusal to permit a single question during extensive cross-examination of a witness during lengthy administrative hearings was not prejudicial error justifying reversal.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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Supreme Court of the United States

OCTOBER TERM, 1964

No. 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, *Petitioner,*

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR PETITIONER

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INDEX

	Page
Opinion Below	1
Jurisdiction	2
Statute Involved	2
Questions Presented	2
Statement of the Case	3
Summary of Argument	16
Argument	24
I. The Board and the court below misconstrued and misapplied the aid component of the section 3(4) definition of a Communist-front organization	24
A. The findings of the Board and the court below show that the American Committee's operation consists of peaceful activities to protect the interests of the foreign born	25
B. The Board construed the aid component to make it depend on the organization's subjective motivation, regardless of the nature of its activities	28
C. The court below construed the aid component to be present whenever an organization under Communist Party control engages in activities which can favorably impress the public	34
D. The aid component, properly construed, requires a showing that the organization's activities aid the insurrectionary objectives attributed to the Communist Party by section 2 of the Act	37
II. The Board and the court below misconstrued and unconstitutionally applied the Act by imposing liability on the American Committee for matters found concerning other organizations (the Area Committees) with which it cooperated but which it did not control	50

Page

A. The American Committee was held liable for matters found against the Area Committees despite the absence of evidence or finding that it controlled the latter groups 50

B. The imposition of this vicarious liability was an unconstitutional application of the Act .. 53

C. The Board's construction is not supported by the language of section 3(2) 56

III. The Board and the court below otherwise misapplied the Act and relied on irrelevant considerations and incompetent evidence to an extent which denied the American Committee both a fair hearing and an adequate judicial review ... 57

A. The Board's conclusion as to the American Committee's "purpose" otherwise rests on irrelevant and incompetent evidence and misapplications of the Act 58

1. Defense work beyond normal purposes ... 58

(a) The Estes and Green cases 59

(b) The Eisler case 61

2. Incompetent conclusory testimony of Lautner 64

3. Incompetent opinion testimony 67

4. Hearsay 69

5. Praise from the Communist Party 71

6. Non-deviation 73

a. Misuse of non-deviation as a test of the aid component 73

b. The evidence of non-deviation 74

(i) Eisler 74

(ii) The Smith Act 74

(iii) More asides 77

(iv) Criticism of the government 77

(v) Defense of Communist aliens 79

7. The reservoir conclusion 80

Page

B. The conclusion of the Board on the control component and the affirmance thereof by the court below otherwise rest on irrelevant and incompetent evidence and misapplication of the Act 83

1. Misapplication of section 13(f)(1) 84

2. The evidentiary findings as to Green 87

3. The evidentiary findings as to Harriet Barron and Dorothy Strange 90

4. The Board's misapplication of section 13(f)(2) 91

5. The court's reliance on improper considerations 93

6. The absence of meaningful evidence of control 96

C. Reliance on the testimony of Lautner was erroneous because of the curtailment of his cross-examination 98

IV. The provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face and as applied ... 102

A. The Act and the Board's order violate the First Amendment because they restrain rights of association, speech, press and petition without justification 102

1. The clear and present danger test applies and is not satisfied 102

2. If the balancing test applies, it is not satisfied 106

B. The Act and the Board's order violate the First Amendment and due process because the control component, as construed by the Board and the court below, is vague 108

Page

C. The Act and the Board's order violate due process because the Area Committee was bound by the Board's finding, made in the proceeding against the Communist Party, that the Communist Party is a Communist-action organization 110

D. The Act is invalid because it conflicts with the privilege against self-incrimination 112

Conclusion 113

Appendix—Statute Involved 1a

CASES CITED

Alford v. United States, 282 U. S. 687 .....99, 100, 101
American Committee v. S. A. C. B., 331 F. 2d 53 1
American Communications Assoc. v. Douds, 339 U. S. 382 104
Aptheker v. Secretary of State, 378 U. S. 500 .....5, 47, 55
Baggett v. Bullitt, 377 U. S. 360 .....40, 108, 109
Baker v. Carr, 369 U. S. 186 111
Barber v. Gonzales, 347 U. S. 637 10
Barton v. Sentner, 355 U. S. 2 10
Bates v. Little Rock, 361 U. S. 516 .....55, 103, 104, 106
Bonetti v. Rogers, 356 U. S. 691 10
Boyd v. United States, 116 U. S. 616 112
Bridges v. United States, 199 F. 2d 811, rev'd 346 U. S. 209 88
Brotherhood of Railroad Trainmen v. Virginia, 377 U. S. 1 103
Burlington Truck Lines v. United States, 371 U. S. 156 33
Carlson v. Landon, 342 U. S. 524 .....9, 11, 76, 95
Chastleton Corp. v. Sinclair, 246 U. S. 543 111
Chaunt v. United States, 364 U. S. 350 10
Chew v. Colding, 344 U. S. 590 10
Cole v. Arkansas, 333 U. S. 196 .....56, 110
Colorado-Wyoming Gas Co. v. F. P. C., 324 U. S. 626 .. 33
Communist Party v. S.A.C.B., 367 U. S. 1 ..4, 22, 24, 44, 73, 80, 96, 101, 103, 105, 106, 107, 111, 112

Page

Communist Party v. United States, 331 F. 2d 897, cert. den. sub nom. United States v. Communist Party, 377 U. S. 968 112
Cramp v. Bd. of Public Instruction, 368 U. S. 278 ..... 45, 108, 109
DeJonge v. Oregon, 299 U. S. 353 107
Dennis v. United States, 341 U. S. 494 ..... 75, 104
Eisler v. United States, 353 U. S. 857; 338 U. S. 189; 338 U. S. 883 62
Estes v. Potter, 183 F. 2d 865 60
Flemming v. Nestor, 363 U. S. 603 10
Galvan v. Press, 347 U. S. 522 .....
Gastelum-Quinones v. Kennedy, 374 U. S. 469 10
Grant Food Stores v. Fine, 269 F. 2d 542 67
Harisiades v. Shaughnessy, 343 U. S. 580 ..... 9, 11, 40, 76, 95
Heikkila v. Barber, 345 U. S. 229 10
Heikkinen v. United States, 355 U. S. 273 10
Hyun v. Landon, 350 U. S. 990 10
Jay v. Boyd, 351 U. S. 345 ..... 10, 11
Jenkins v. United States, 307 F. 2d 637 68
Kimm v. Rosenberg, 363 U. S. 405 10
Kirby v. United States, 174 U. S. 47 110
Maisenberg v. United States, 356 U. S. 670 10
Mesarosh v. United States, 352 U. S. 1 101
N.A.A.C.P. v. Alabama, 357 U. S. 449 ..... 103, 104, 106
N.A.A.C.P. v. Button, 371 U. S. 415 ..... 55, 103
National Council of American-Soviet Friendship v. S.A.C.B., 322 F. 2d 375 ..... 47, 85
Niukkanen v. McAlexander, 362 U. S. 390 10
Noto v. United States, 367 U. S. 290 ..... 75, 110
Nowak v. United States, 356 U. S. 660 10
Renaud v. Abbott, 116 U. S. 277 ..... 56, 110
Rowoldt v. Perfetto, 355 U. S. 115 ..... 10, 11, 40
Scales v. United States, 367 U. S. 203 ..... 75, 107
Schneiderman v. United States, 320 U. S. 118 40
S. E. C. v. Chenery Corp., 318 U. S. 80 ..... 33, 37
S. E. C. v. Chenery Corp., 332 U. S 194 ..... 33, 37
Shelton v. Tucker, 364 U. S. 479 55
Simmons v. United States, 206 F. 2d 427 68
Talley v. California, 362 U. S. 60 108
Thomas v. Collins, 323 U. S. 516 ..... 103, 104, 105
United States v. Carolene Products Co., 304 U. S. 144 .. 111

Page

United States ex rel. Doyle v. District Director, 169 F. 2d 753 63
United States v. Spaulding, 293 U. S. 498 68
United States v. Spector, 343 U. S. 169 ..... 10, 95
United States v. Witkovich, 353 U. S. 194 10
Wieman v. Updegraff, 344 U. S. 183 55
Wesson v. United States, 164 F. 2d 50 68
Yates v. United States, 354 U. S. 298 75

STATUTES

Subversive Activities Control Act of 1950, 64 Stat. 987, 50 U. S. C. 781 *ff.* 2, 1a

Sec. 2 ..... 17, 32, 37, 38, 48
Sec. 2(6) 47
Sec. 2(7) 46, 47
Sec. 2(15) 27
Sec. 3(2) 15, 19, 20, 51, 52, 53, 56
Sec. 3(3) 15, 44, 45, 49, 57, 73, 110
Sec. 3(4) 4, 18, 23, 24, 38, 44, 46, 49, 57, 108, 110
Sec. 3(4A) 49
Sec. 5(a) 5
Sec. 6 5
Sec. 7 ..... 56, 57
Sec. 7(b) 4, 14, 102
Sec. 7(c) 4, 102
Sec. 7(e) 4
Sec. 9(b) 4, 102
Sec. 10 5
Sec. 11 5
Sec. 13 3
Sec. 13(e) 73
Sec. 13(f) 18, 21, 48, 73, 84, 86, 91, 92, 93
Sec. 13A, 50 U. S. C. 792a 3
Sec. 13A(f) 33, 46
Sec. 14(a) 2, 6, 14
Sec. 14(b) 5
Sec. 15 6
Sec. 16 33

	Page
Sec. 10, Communist Control Act of 1954, 50 U. S. C. 792a	3
Sec. 8(b), Administrative Procedure Act, 5 U. S. C. 1007(b)	33
Alien Registration Act of 1940, 54 Stat. 670	75
8 U. S. C. 1251(a)(6)(D)	5
8 U. S. C. 1451(c)	5
20 U. S. C. 581(f)	5
28 U. S. C. 1254	2
42 U. S. C. 410(a)(17)	5
42 U. S. C. 1874(d)(2)	5
Immigration and Nationality Act	94
Internal Security Act of 1950	94
Art. 5, Geneva Convention on Prisoners of War, 47 Stat. 2030	62
H. R. 9490, 81st Cong., 2d Sess.	45
H. Rep. 2980, 81st Cong., 2d Sess.	45
96 Cong. Rec.	80
110 Cong. Rec.	111
McCormick, Evidence (1954)	67, 68
Chafee, The Blessings of Liberty (1956)	41
Webster's Third International Dictionary (1961)	48
Shakespeare, The Winter's Tale	48
Wash. Eve. Star, Sept. 3, 1964	111
Wash. Daily News, Aug. 18, 1964	43
Supreme Court Rule 21(3)	1

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OCTOBER TERM, 1964

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On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR PETITIONER

OPINION BELOW

The opinion below (R. 71-90)[1] is reported in 331 F. 2d 53.

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[1] "R." refers to the printed record. "Tr." refers to the original transcript, which has been filed with the Court pursuant to Rule 21(3). "P. Ex." refers to an exhibit introduced in the administrative proceeding by the Attorney General, there the petitioner. "R. Ex." refers to an exhibit introduced by the present petitioner, the respondent in the administrative proceeding.

JURISDICTION

The judgment below is dated and was entered on December 17, 1963 (R. 91). The petition for certiorari was filed on March 12, 1964, and was granted on April 27, 1964 (R. 181). The Court has jurisdiction under section 14(a) of the Subversive Activities Control Act of 1950, as amended,[2] 64 Stat. 1001, 68 Stat. 780, 72 Stat. 950, 50 U.S.C. 793, and 28 U.S.C. 1254.

STATUTE INVOLVED

Pertinent provisions of the Act are set forth in the Appendix to this Brief.

QUESTIONS PRESENTED

1. Whether the provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face or as applied in this case.

2. Whether an organization satisfies the Act's requirement that a Communist-front organization be "primarily operated for the purpose of giving aid and support to a Communist-action organization" (i.e., the Communist Party) by reason of engaging in peaceable activities for the forwarding of innocent objectives—specifically, in this case, defending by litigation and other lawful means the rights of any foreign born who seek its help.

3. Whether an organization accused of being a Communist-front organization may be conclusively bound by a Board finding, made in an earlier proceeding to

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[2] The Subversive Activities Control Act is Title I of the Internal Security Act of 1950, 64 Stat. 987, and as amended is hereafter referred to as the Act. The petitioner herein is hereafter referred to as the American Committee. The Subversive Activities Control Board, the respondent herein, is hereafter called the Board.

which the accused organization was not a party, that the Communist Party is a Communist-action organization.

4. Whether the court below accorded a fair and adequate review of the findings and conclusions of the Board.

5. Whether the evidence supports the order of the Board.

6. Whether the Board erroneously curtailed cross-examination of a key witness for the Attorney General.

7. Whether an organization may be found to be a Communist-front organization on the basis of evidence and findings concerning other organizations with which it cooperates but which it does not control.

8. Whether the order of the Board and its affirmance below rest on irrelevant considerations and incompetent evidence.

STATEMENT OF THE CASE

The decision of the court below (R. 71-91) affirmed, Chief Judge Bazelon dissenting, an order of the Board (R. 70) that the American Committee register as a Communist-front organization pursuant to the Act.

The Act

Section 13 of the Act provides for administrative proceedings before the Board, instituted by petitions of the Attorney General, to determine whether accused organizations shall be ordered to register as "Communist-action" or "Communist-front" organizations.[3]

[3] The Act also authorizes the Board to declare whether organizations are "Communist-infiltrated" organizations. Such organizations are deprived of the benefits of the National Labor Relations Act, but are not required to register. Sec. 13A, added by sec. 10 of the Communist Control Act of 1954, 50 U.S.C. 792a.

On April 20, 1953, in the first case brought under the Act, the Board ordered the Communist Party of the United States of America to register as a Communist-action organization (R. 16). That order was eventually sustained in *Communist Party* v. *S.A.C.B.*, 367 U.S. 1 (four Justices dissenting).

A Communist-front organization is defined by section 3(4) of the Act as one "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title."[4]

A Communist-front organization is required to register as such with the Attorney General (sec. 7(b)). It must also file with the Attorney General a registration statement showing the names and addresses of its officers, an accounting for the preceding twelve months of all moneys received and expended, including the sources from which received and the purposes for which expended, and a listing of all printing and duplicating facilities possessed, owned or controlled by the organization, its officers and members (sec. 7(c)). Annual reports must be filed to keep the registration statement current (sec. 7(e)). The registration, registration statements and annual reports must be kept open for public inspection (sec. 9(b)).

---

[4] The references in section 3(4) to a Communist foreign government and the world Communist movement are not applicable here, since the American Committee was found to be controlled by, and primarily operated for the purpose of giving aid to, the Communist Party, "a Communist-action organization" (R. 66).

The organization must label any publication which it distributes through the mail or interstate or foreign commerce with the legend, appearing on both the publication and the outside envelope or wrapper, "Disseminated by ....., a Communist organization." Its radio and television broadcasts must be announced as sponsored by a Communist organization. (Sec. 10.) Contributions to the organization are not tax deductible, and the organization itself is denied tax exemption (sec. 11). Service in the employ of the organization is not considered employment for social security purposes (42 U.S.C. 410(a)(17)). Employees of the government or of any privately owned "defense facility" may not contribute funds or services to the organization (sec. 5(a)(2)).

Members of the organization may not hold employment with the federal government or any labor organization, and must disclose their membership when seeking employment in any defense facility (sec. 5(a)). They may not apply for fellowships or loans under the National Defense Education Act (20 U.S.C. 581(f)) or for National Science Foundation scholarships or fellowships (42 U.S.C. 1874(d)(2)). If aliens, they may not be naturalized and are subject to deportation (8 U.S.C. 1251(a)(6)(D)). If recently naturalized, they are prima facie liable to denaturalization (8 U.S.C. 1451(c)).[5]

These consequences apply when the order becomes final by virtue of the exhaustion of judicial review (sec. 14(b)). The Act imposes severe criminal penalties for failure to register after a registration

[5] Section 6 of the Act, prohibiting members from using or applying for passports, was held unconstitutional in *Aptheker* v. *Secretary of State*, 378 U.S. 500.

order has become final and for violation of the Act's sanctions on the organization and its members (sec. 15).

Board findings must be supported by a preponderance of the evidence (sec. 14(a)).

The American Committee

The American Committee, an unincorporated association, was formed in November 1933 by the American Civil Liberties Union and several labor union locals (P. Ex. 242). Its purpose, as stated in its constitution, is to promote the interests of the foreign-born in the United States "regardless of race, color, nationality, creed, or place of birth" (R. 41).

The American Committee's governing authority is its Annual Conference (R. Ex. 88; R. 55-56, 172). Notice of the Annual Conference is given by sending thousands of calls to organizations and individuals who may be interested in attending. Anyone may attend the Conference either as an individual or as a delegate of an organization. Upon registering and paying a registration fee of one or two dollars, he may participate fully in the Conference's deliberations and actions, including the election of the American Committee's officers and the adoption of its policies and programs. The Conferences have been attended by as many as 300 to 400 people, including delegates from various organizations (nationality, trade union, church, civil liberties, and women's groups, etc.). (R. 55, 174; Tr. 4874-81, 4136-41, 4600-01.)

Between Annual Conferences, the executive secretary is responsible for the work and activities of the American Committee (R. Ex. 88). Abner Green joined

the American Committee's staff in 1936, became executive secretary in 1941, and held that position continuously thereafter. During his tenure as executive secretary, Green was the leading figure in the operation of the American Committee and its affairs.[6] (R. 28.)

The American Committee is a national organization with an office in New York City (R. 20, 21, 64). There grew up, however, and existed at the time of the administrative proceeding, various local groups, which we here call Area Committees, each of which was styled "Committee for Protection of Foreign Born," preceded by a geographical designation, such as "Los Angeles" or "New England" (R. 21).

The Area Committees sometimes referred to themselves as chapters, branches or affiliates of the American Committee, and the American Committee sometimes referred to the Area Committees in similar terms. Simultaneously, the American Committee would state that the Area Committees were not its branches or affiliates. (R. 22-27; Tr. 5184).

Disregarding nomenclature, the evidence is uncontradicted as to the relationship between the American Committee and the Area Committees. The American Committee encouraged the formation of Area Committees and took the initiative in getting some of them organized (Tr. 5296-97, 5138, 5143-46). Other Area Committees were organized without the American Committee's participation and sometimes without its knowledge (Tr. 5172-74, 5225-26, 5230, 5261-62, 5274-75). Generally, formation of Area Committees was an

[6] Mr. Green died on September 9, 1959.

outgrowth of the initiation of deportation cases in the area which aroused local concern or indignation (Tr. 4132, 5292-96). The Area Committees work along lines and have policies similar to those of the American Committee. The Area Committees and the American Committee exchange literature and otherwise cooperate. The American Committee, however, neither has nor exercises authority or control over the Area Committees. They elect their own officers, decide their own policies, methods and activities, raise and spend their own funds as they see fit—all without intervention or direction of the American Committee. Thus each Area Committee is completely its own master and independent of any other Area Committee and of the American Committee. (Tr. 4132-36, 4433, 4494, 5121-22, 5127, 5130-43, 5805-07; R. 23, 26.)

Throughout its history the American Committee has engaged in a vast variety and scope of activities relating to almost every conceivable issue involving the interests of the foreign born, and it has issued a tremendous volume of literature, of which the record contains a sampling. Its work in the foreign-born field includes educational and cultural projects and material, legislative work, mounting public campaigns on legislation and matters of interest to the foreign born, technical assistance to applicants for naturalization, legal defense work, etc.[1]

The American Committee has always opposed the deportation of resident aliens and the denaturalization

[1] See R. 53-55 and the numerous issues of the American Committee's publication, *The Lamp*, of proceedings of its Annual Conferences, and of its other publications, introduced as exhibits by both sides. See also Tr. 5598-5603, 5676-77, 5683-5959, 5983-6058, 6088-98, 6113-16, 6180-97, 4102, 4057, 4956-62, 5376.

of naturalized citizens, no matter what the basis for the action (Tr. 5960-63, 4909-10, 4926-27, 5957). Thus in 1942 it opposed both denaturalization actions against members of the German-American Bund and other Nazi or Fascist sympathizers and the denaturalization action against William Scheiderman, a leading Communist (Tr. 5325-28).

The American Committee's defense work consists of litigating or otherwise intervening in behalf of specific aliens or naturalized citizens involved in problems connected with their foreign origin. This defense work has included assistance to aliens being refused naturalization on various grounds, to aliens facing deportation charges, and to naturalized citizens facing denaturalization actions. (R. 20, 53, 57, 78; A.G. Ex. 259, pp. 7-10; Tr. 5927-29, 5974-83, 6014-15, 6057-80, 6053-54.) Defense work also includes the issuance of literature on the cases appealing to the public to protest the deportation or denaturalization action and to contribute funds for the defense effort (R. 20, 53-54, 57-58, 60; R. Ex. 97, 174, 232; P. Ex. 2, 18).

The American Committee is publicly committed, and has never refused, to assist any individual who seeks its help in a deportation or denaturalization case, no matter what the charge involved (Tr. 4142-44, 5488-90; R. 79). If desired, and if the case is defensible, the American Committee supplies counsel and handles the litigation in the administrative and judicial proceedings, sometimes through this Court and often successfully (Tr. 4142-44, 5212-13, 5488-90; R. 58, 78).[8]

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[8] Among cases litigated in this Court by the American Committee or an Area Committee or both in conjunction are *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Carlson* v. *Landon*, 342 U.S. 524;

All defense work is done at the expense of the American Committee and without cost to the individual being assisted. No conditions of any kind are imposed on the assistance, nor is the alien or his family ever questioned about his political views or affiliations or subjected to indoctrination. (Tr. 4571-72, 4581-83, 5488-90.)

From its inception, the American Committee defended deportation cases involving charges that the alien was or had been a member of the Communist Party (Tr. 5446, 5466-68, 4801). The first American Committee case that Abner Green heard about, in 1935, was its defense of a Jewish refugee whom the Immigration Service was seeking to deport to Nazi Germany and sure death, on a charge that he had been a Communist in Germany (Tr. 4805-06). As the Board (R. 57) and the court below (R. 78) found, the American Committee also has defended numerous non-Communists in deportation cases not involving charges of Communism or other political grounds. Abner Green, the one person in a position to know, testified that over a twenty-year period the American Committee defended 3,000 to 4,000 deportation cases, of which about 350 to 400 involved charges of past or present Communist Party membership or affiliation (Tr. 6112-13, 6122). The Board estimated, but without

United States v. *Spector*, 343 U.S. 169; *Chew* v. *Colding*, 344 U.S. 590; *Heikkila* v. *Barber*, 345 U.S. 229; *Barber* v. *Gonzales*, 347 U.S. 637; *Hyun* v. *Landon*, 350 U.S. 990; *Jay* v. *Boyd*, 351 U.S. 345; *United States* v. *Witkovich*, 353 U.S. 194; *Barton* v. *Sentner*, 355 U.S. 2; *Rowoldt* v. *Perfetto*, 355 U.S. 115; *Heikkinen* v. *United States*, 355 U.S. 273; *Nowak* v. *United States*, 356 U.S. 660; *Maisenberg* v. *United States*, 356 U.S. 670; *Bonetti* v. *Rogers*, 356 U.S. 691; *Niukkanen* v. *McAlexander*, 362 U.S. 390; *Kimm* v. *Rosenberg*, 363 U.S. 405; *Flemming* v. *Nestor*, 363 U.S. 603; *Chaunt* v. *United States*, 364 U.S. 350; *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469.

any evidentiary basis, that the latter type of cases were "at least in excess of fifty percent" (R. 58 ftn.).

Prior to 1946, deportation cases charging past or present Communist Party membership were few and occasional (Tr. 5396-97). But beginning in 1946, with the onset of the cold war, the Department of Justice instituted such cases in large quantity, most alleging Party membership of short duration in the '30's (Tr. 5397-99, 5454-55, 5969, 6116). The Department's drive was not restricted to security risks. It extended to aliens proceeded against on flimsy evidence; to aliens long resident in the United States whose Party membership, if any, had been nominal and many years past; to aliens whose expulsion would destroy long-established American families. It was marked by highly questionable and oppressive procedures. (E.g., P. Ex. 17, 23, 47, 51, 166; R. Ex. 191, 173; Tr. 5412-27. See also *Rowoldt* v. *Perfetto,* 355 U.S. 115; the description of the aliens involved in *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 581-83; *Carlson* v. *Landon,* 342 U.S. 524; *Jay* v. *Boyd,* 351 U.S. 345.)

The aliens and their families facing the Department's political deportation drive were generally poor, and in the prevailing climate the nature of the charge increased their difficulty in obtaining help. It was natural for them to come to the American Committee, which was expert in the deportation field and publicly committed to helping any alien who sought its help, or to the Area Committees which operated on like principles. (Tr. 4145-46, 5464-65.) For example, when Charlie Soldo, a retired West Virginia coal miner, was arrested on a political deportation charge, his regular lawyer refused to represent him out of fear that it would hurt his (the lawyer's) reputation. It was then

that the desperate Soldo family obtained help from the Western Pennsylvania Committee for Protection of Foreign Born, which provided Soldo a lawyer without cost to him. The case was eventually won before the Board of Immigration Appeals because of the insufficiency of the evidence. (Tr. 6295-96, 6299-6300, 6311.)

Bennie Saltzman, husband of an American citizen, father of a son killed in the Battle of the Bulge and of another wounded in the same battle, joined the Communist Party for a short time in the 1930's because the Party was leading the fight against corruption in his union. (Tr. 4549-50, 4954-56.) When Saltzman applied for naturalization, he told the authorities of his past Party membership (Tr. 4557). In 1948 he was arrested without warning on deportation charges and jailed on Ellis Island (Tr. 4560-61). The American Committee furnished counsel, defended him and gave much-needed moral support to the distraught family (Tr. 4566-67, 4570, 4581-83). It did not attempt to win him or his family to Communism, nor did it cause them to harbor ill will toward the United States (Tr. 4571-72, 4614). Mrs. Saltzman testified (Tr. 4661): ". . . they [the American Committee and its General Counsel, Carol King] made me feel that I have friends; that I have friends to help me, and thus [that's] why I have so much faith and so much faith in the American Committee for the Protection of Foreign Born."

The American Committee finances its activities by appeals to the public for funds and by sales of its literature (Tr. 4252-53, 6230-32; R. 55). Its financial records are audited annually, and the audit summary is published each year in the organization's periodical, *The Lamp* (Tr. 4141-42, 6233; R. Ex. 241, p. 4).

Prior to the cold war, the American Committee's relations with the government, including the Department of Justice, were often amicable. The American Committee and the Immigration Service cooperated in projects of common interest (Tr. 5379-92; R. Ex. 212, 238, 239; R. 62). High government officials, including the Commissioner of Immigration and Naturalization, spoke at the organization's conferences and other affairs (R. 62; R. Ex. 187, pp. 3-4; Tr. 5663-64, 5672, 5316-18, 5332, 5372; P. Ex. 165, 258, p. 20; R. Ex. 133, 135, 156, 170). The Department of Justice supplied without charge radio time for a broadcast (R. 62; Tr. 5621-25), and the Office of War Information broadcast a program by the American Committee (R. 62; Tr. 6227-29; R. Ex. 240). President Roosevelt, General Eisenhower, Attorneys General, other cabinet officers, Senators and Representatives sent messages to the organization's affairs (R. Ex. 135, 38, 39, 133, 160, 162, 169, 167, 168; P. Ex. 165, 259, 160, 162, 163; R. 62; Tr. 5315, 5336, 5340, 5675-76).

These governmental manifestations of friendliness abounded in the proceedings of the 1945 Annual Conference of the American Committee (P. Ex. 259). The Annual Conference was not held in 1946 (Tr. 5387).

The next Annual Conference convened in October 1947 (P. Ex. 245). The American Committee's policies and positions were identical with what they had been before (Tr. 5400). Abner Green, the executive secretary, had held that post since 1941. But the cold war was under way, and the anti-Communist deportation drive was in full swing. No government officials spoke or sent messages (P. Ex. 245). A year or two later, the Attorney General included the American Committee on his so-called list of subversive organiza-

tions, without the formality of a hearing (Tr. 5082-83, 5086-88, 6901-02).[9]

The Proceeding

On April 22, 1953, the Attorney General instituted this proceeding by filing a petition with the Board for an order requiring the American Committee to register as a Communist-front organization under section 7(b) of the Act (Tr. 7510). On August 28, 1953, the Attorney General filed an amended petition (R. 2), which the American Committee answered (R. 8). On June 27, 1960, the Board issued its registration order against the American Committee (R. 70) and a Report (R. 14-69) containing its findings and conclusions. The American Committee filed a petition for review in the court below under section 14(a) of the Act. On January 8, 1962, the court remanded the case to the Board for purposes no longer relevant. On March 8, 1962, the Board issued a Report on Reconsideration (R. 72).[10]

At the administrative hearing, most of the testimony introduced by the Attorney General related to some of the Area Committees and their supposed connections with the Communist Party. The American Committee did not seek to refute this testimony. Instead, it introduced evidence that the Area Committees were independent organizations which it did not control, and

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[9] But eminent private individuals thereafter continued participation in petitioner's affairs or projects including Thomas Mann (Tr. 5470-71, 5507; R. Ex. 152), Bishop Arthur W. Moulton (Tr. 7001 ff.), Prof. Anton J. Carlson (Tr. 4388 ff.), Prof. Louise Pettibone Smith (Tr. 3961 ff.), and many others (Tr. 5595-96).

[10] Subsequent references herein to the Board's Report are to the original Report. For present purposes, the Report on Reconsideration is of no significance (R. 72).

contended that it could not be held liable for their actions. (R. 21; *supra*, pp. 7-8) The Board made no finding that the American Committee controls the Area Committees. It held, however, under its construction of section 3(2) of the Act, that the American Committee and the Area Committees constitute one organization for the purposes of the Act because they "are associated together for joint action on particular subjects" (R. 27). The Board thereafter, throughout its Report (R. 33-66), relied on evidence concerning the Area Committees. Thus the Report's Concluding Findings (R. 64-66) summarize as findings relating to the American Committee preceding evidentiary findings relating to both the American Committee and Area Committees.

The most damaging findings relating to the American Committee itself were based on testimony of the Attorney General's witness Lautner. This testimony and the findings are later described, as is the curtailing of Lautner's cross-examination (*infra*, pp. 98-101).

The Board concluded that the American Committee met the definition of a Communist-front organization on the ground that it "has been and is (i) substantially directed, dominated, or controlled by the Communist Party of the United States, a Communist-action organization as defined in section 3(3) of the Act, and (ii) primarily operated for the purpose of giving aid and support to such Communist-action organization" (R. 66). At the administrative hearing, no evidence had been introduced to establish that the Communist Party was a Communist-action organization. The Board held that the American Committee was bound in this respect by the Board's determination of April 20, 1953, made in the proceeding against the Party, to which the American Committee was not a party (R. 16).

The court below affirmed the order of the Board, per Judges Prettyman and Danaher, with Chief Judge Bazelon dissenting (R. 71-90).

SUMMARY OF ARGUMENT

I.

One of the two components of the Act's definition of a Communist-front organization is that it be "primarily operated for the purpose of giving aid and support to a Communist-action organization" (i.e., the Communist Party). Both the Board and the court below misconstrued and misapplied this aid component, and the Board's own evidentiary findings demonstrate that the aid component, properly construed, was not satisfied.

A. The findings of the Board and the court below show that the activities of the American Committee consist primarily of efforts to protect the interests of the foreign born, including defending all aliens who seek its help in deportation and denaturalization proceedings and advocating reforms in our immigration laws. There is no finding or evidence that the American Committee advocated or furthered insurrection or other illicit conduct, that it promoted Communist ideology, or assisted the Communist Party organizationally, as by recruiting members for it.

B. The Board applied the aid component to make it depend on the organization's subjective motivation, called "purpose," without regard to the nature of its activities. The Board found that the American Committee had the motivation ("purpose") of aiding and supporting the Communist Party, particularly by defending members of the Party in deportation and denaturalization cases.

C. The court below held that the American Committee aided the Communist Party in two ways. First, by defending alien members of the Party in deportation and denaturalization cases, the American Committee thereby helped the Party itself. Second, by engaging in the "laudable" activity of protecting the rights of any alien who sought its help, the American Committee improved the public image of, and thereby aided, the Communist Party. The Court's theory did not depend on an organization's motive, but on the combination of Communist Party control of an organization and the doing of good deeds by the latter.

The differences in the interpretation of the aid component between the Board and the court require a reversal under the doctrine that an administrative action must be judged solely on the grounds invoked by the agency.

D. The common factor in the application of the aid component by the Board and the court below was finding the component satisfied by innocent activities directed toward innocent objectives—in this case, the American Committee's work in behalf of the foreign-born and particularly its defense of aliens involved in deportation cases.

Properly construed, however, the aid component does not, and constitutionally cannot, comprehend innocent activities directed toward innocent objectives. Instead, the component refers to aiding the insurrectionary activities attributed to the Communist Party by section 2 of the Act. At most, it can be expanded only to include direct aid to the Party in its organizational operations, such as recruiting Party members.

1. To apply the Act against organizations which engage only in "laudable" activities, regardless of their

motivation, misuses a statute whose purported purpose is protection of the national security. It is offensive to persecute an organization under the Act for defending aliens in litigation. This application of the Act endangers the right of association in all cause organizations and magnifies the constitutional objections to the Act.

2. The sensible reading of "aid and support to a Communist-action organization" in section 3(4)(B) is aid to such an organization in the distinctive activities which characterize it as an action organization, all of which are baneful. As construed by this Court, the Act did not require even the Communist Party to register without a finding that it engaged in such harmful conduct. The Act is not harsher toward other organizations.

The legislative history confirms that Congress was not seeking to hit innocent activity, and was aware that legislation cannot and should not be directed against peaceable Communist activity.

The construction of the Board and the Court below eliminates the aid component of section 3(4). The first component of the section is Communist Party control. Any organization under such control would be operated to benefit the Communist Party in some way.

The construction below is also inconsistent with other provisions of the Act, including the severe sanctions levied on Communist-front organizations, the recited justification for the Communist-front provisions, and the criterion provided by section 13(f)(3) as a guide to ascertaining the existence of the aid component.

The word "purpose" in section 3(4)(B) does not, as the Board thought, make the aid component turn

solely on the subjective motivation of the organization. "Purpose" can have an objective meaning, and the Board's construction destroys the pattern of the Act's definitions of action, front and infiltrated organizations.

II.

The Board and the court below erred in holding the American Committee liable for matters found against the Area Committees.

A. The Board did not find that the Area Committees were constituent components of the American Committee, nor did it find that the Area Committees were controlled by the American Committee. All the evidence is to the contrary. The basis for the Board's holding was that the American Committee and the Area Committees cooperated, and thus, by the Board's view, were a single organization under the section 3(2) definition of "organization" as including "a group of persons . . . permanently or temporarily associated together for joint action on any subject or subjects."

B. This application of the Act represents an unprecedented extension of vicarious liability. The application violates due process by imposing liability and disabilities for conduct in which those held liable did not engage, of which they were not aware, and which cannot be imputed to them by any reasonable or conventional standards.

This application makes it dangerous for organizations to associate or cooperate with other organizations. The application violates the First Amendment by creating a serious encroachment on the rights of association which is not justified by a compelling governmental interest and which goes far beyond the necessi-

ties of any legitimate governmental purpose. The Board's construction also denies procedural due process to the Area Committees by imposing liability on them without a hearing.

C. The language of Section 3(2) does not compel the Board's construction. The purpose of the section was merely to reach informally organized groups, not to treat several distinct groups as one merely because they cooperate. The Board misread the language of the section, since the word "group" is singular, and "associated" modifies "persons."

The Board's theory makes registration impossible, since a registering organization does not have, and cannot obtain, the necessary information from organizations which it does not control. And since all Communist-front organizations are by definition associated with the Communist Party, the Board's theory makes superfluous the Act's provisions for separate proceedings against, and separate registrations by, Communist fronts.

III.

The Board and the court below committed numerous other prejudicial errors, to an extent which denied the American Committee both a fair hearing and an adequate judicial review.

A. Even if the Board was right in its interpretation of the aid component, it was wrong in concluding that the American Committee's "purpose" is to aid the Communist Party. An examination of all the subsidiary findings from which this conclusion was drawn shows that the Board relied on irrelevant matters, distortions of the evidence, and incompetent testimony. The Board misused the non-deviation test of section

13(f)(4), by employing it to determine the aid component, whereas it is relevant only to the control component. Moreover, the finding of non-deviation was not justified by the evidence. There is neither evidence nor evidentiary findings to support the Board's concluding finding that the American Committee had the secondary purpose of seeking to win good will to create a reservoir of supporters of the Communist Party.

B. The Board's finding that the American Committee is controlled by the Communist Party is also based on irrelevancies and misapplications of the Act. The Board misapplied section 13(f) (1) of the Act, by holding it was satisfied without any finding that any manager or director of the American Committee was, at the time of the administrative hearing, a representative of the Communist Party. All the Board found was that Abner Green had once been such a representative.

An examination of the Board's subsidiary findings shows that the Board was not justified in finding that Green was ever a representative of the Communist Party and that Green, Barron and Strange were members of the Communist Party. Nor does the evidence support the finding made under section 13(f)(2) that the Communist Party aided the American Committee.

The court below affirmed the Board's control finding on the basis of egregiously irrelevant and political considerations, including a mystifying view that it is "Communist doctrine" to maintain that the freedom of all is endangered by attacks on the freedom of Communists.

The Board cited no instance in which the American Committee received dictates from the Communist Party or adopted programs or policies for reasons other than

those arising from its own independent judgment. Thus there is lacking meaningful evidence of "control," as defined by this Court in the *Communist Party* case.

C. The Board and the court relied heavily on testimony of Lautner adverse to the American Committee. This was error, since the Board curtailed the cross-examination of Lautner by permitting him to withhold his place of residence and by excluding questioning designed to show that his reason was a pretext. Because of changed circumstances, this error cannot be rectified by remanding for further cross-examination. Hence all of Lautner's testimony must be stricken, in which event the Board's order clearly lacks evidentiary support.

IV.

The provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face and as applied.

A. 1. The Act and the Board's order restrain rights of association, speech, press and petition, all protected by the First Amendment. In the *Communist Party* case, the Court applied the balancing test on the theory that the registration order against the Party was only an indirect or incidental restraint of First Amendment rights. Here the restraint is direct. An organization like the American Committee seeks reforms within the existing political structure rather than revolutionary changes. It cannot survive the destructive effects of a registration order. By destroying the organization, the order directly restrains association in it.

The order likewise directly restrains speech, press and petition because it conditions the continued exer-

cise of these rights on registration and because the finding was based on the American Committee's exercise of the rights.

Hence the clear and present danger test is applicable here. That test is not met, there being neither finding nor evidence of any dangerous advocacy or activity.

2. The Act and the Board's order also fail the balancing test, if that is applicable. That test requires that the restraint on First Amendment interests be outweighted by a compelling governmental interest, and that there be a substantial connection between the disclosure demanded and the purpose which the disclosure is asserted to serve. These standards are not satisfied in the case of an organization whose activities concededly consist of peaceable and laudable efforts to protect the interests of the foreign born.

B. By the construction of the Board and the court below, the aid component of section 3(4) includes any activity that may benefit the Communist Party no matter how collaterally or intangibly. This makes the Act's standard for imposing liability so vague and comprehensive as to violate both due process and the First Amendment.

C. The American Committee was held bound by the Board's determination, made in a prior proceeding against the Communist Party, that the latter organization was a Communist-action organization. This preclusion violates the due process principle that no one may be deprived of liberty without an opportunity to contest the factual premises on which the deprivation depends.

Moreover, the finding as to the Communist Party was made as of April 20, 1953, but precluded the Amer-

ican Committee as to the nature of the Party on June 27, 1960. The denial of an opportunity to prove the contemporaneous facts was also a violation of due process.

D. In the *Communist Party* case, a majority refused to determine as premature the contention that the Communist-action provisions of the Act are invalid because they conflict with the privilege against self-incrimination of the Party's officers. The Court should reverse that holding and hold those provisions of the Act invalid for the reasons stated in the dissenting opinions. Such action, if it is taken, will necessarily invalidate the Communist-front provisions.

ARGUMENT

I. THE BOARD AND THE COURT BELOW MISCONSTRUED AND MISAPPLIED THE AID COMPONENT OF THE SECTION 3(4) DEFINITION OF A COMMUNIST-FRONT ORGANIZATION.

Section 3(4) of the Act defines a Communist-front organization in terms of two characteristics, both of which must be present. The organization must be one "which (A) is substantially directed, dominated or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title." We call the first of these characteristics the "control component," the second, the "aid component."

The Board held both components satisfied by concluding (R. 66) that the American Committee is substantially controlled by, and is primarily operated for the purpose of aiding and supporting, the Communist Party, "a Communist-action organization." We here deal with the components in reverse order.

In our view, the Board and the court below misconstrued and misapplied the aid component. The Board's own evidentiary findings conclusively demonstrate that the aid component, properly construed, was not satisfied.[11]

A. The Findings of the Board and the Court Below Show That the American Committee's Operation Consists of Peaceable Activities to Protect the Interests of the Foreign Born

The American Committee has been continuously and actively in operation since its founding in 1933, to a degree which caused the Board to remark (R. 54) on the organization's "apparently tireless work on what it holds out to be issues confronting or affecting the foreign-born." If the American Committee is, as the Board concluded (R. 66), "primarily operated for the purpose of giving aid and support to" the Communist Party, the organization's work obviously should demonstrate that circumstance.

The Board's evidentiary findings, tendentious though they are, establish that the American Committee has devoted itself "primarily," and indeed solely, to activities consonant with its name—the protection of the interests of the foreign born. The third sentence of the Board's findings of fact recites (R. 20) that the American Committee's activities "have centered around the foreign born with considerable effort and attention given to the legal and propaganda defense of individuals involved in deportation and denaturalization cases." The Board devoted a separate section of its findings of fact to the American Committee's

[11] We later show (*infra*, pp. 58-83) that even under the Board's misconstruction, the Board's conclusion is based on irrelevant considerations and incompetent evidence and is not supported by evidentiary findings or the evidence.

"Activities" (R. 53-60). This section shows that the American Committee's work consists of defending all aliens who seek its help, including both Communists and non-Communists, in deportation and denaturalization proceedings; assisting aliens to obtain naturalization; advocating reforms in our immigration and naturalization laws; and otherwise advancing the interests of the foreign born.

The court below similarly described the American Committee's activities, stating (R. 78):

> "The Committee for Protection of Foreign Born (our petitioner) undoubtedly devoted the major portion of its efforts to contesting the deportation of aliens and promoting their naturalization. It furnished counsel and material in court cases in that area, issued statements, made pleas, and in every possible way battled in this behalf. It also fought the Internal Security Act and other statutes and proposed legislation, but the major thrusts of its offensive seems to have been the naturalization and deportation features of these measures. The Committee fought in behalf of many members of the Communist Party. There is some dispute as to the proportion of the persons it aided who were Party members. But there is no dispute as to the fact that it enlisted in behalf of many non-Communists."

The court also referred to the American Committee as "an organization which vigorously devotes itself to the protection of the rights of all and any foreign-born who seek its help" (R. 79), and which by this "laudable, praiseworthy activity" supplies "a facade of good deeds" (R. 80).

Of equal significance to these findings are the things which were not found. Nowhere did the Board or the

court below find or suggest a single instance whereby the American Committee had advocated or otherwise furthered insurrection or other illicit conduct attributed by the Act to the Communist Party; had promoted Communist ideology or, for that matter, any doctrine favoring fundamental social, political or economic changes; or had assisted the Communist Party organizationally, as by recruiting members or raising funds for it.

All seem to agree, therefore, that the American Committee's "primary operation" consists of peaceable activities in the foreign-born field, activities which the court below termed "laudable" and "praiseworthy," and which the Board, though withholding any encomium, was unable to describe as dangerous or malign. The question arises, therefore, as to the basis on which such an organization can have been found to satisfy the aid component of a definition aimed at sinister organizations and contained in an Act which proclaims (sec. 2(15)) that its purpose is to avert "a clear and present danger to the security of the United States and to the existence of American institutions."

The resolution of this question is complicated by the fact that neither the Board nor the court below explicated any theory as to the meaning of the aid component—an omission which also characterizes all other Communist-front cases which either tribunal has decided. There are visible, however, certain assumptions implicit in the application of the aid component by the Board and the court below.

B. The Board Construed the Aid Component to Make It Depend on the Organization's Subjective Motivation, Regardless of the Nature of Its Activities

The Board's Report seems to proceed on the view that the aid component depends not on what an organization does, but on the organization's subjective motivation for what it does. The Board calls this motivation "purpose," presumably under the impression that the aid component refers to motivation when it speaks of an organization's being "primarily operated *for the purpose* of giving aid and support" to the Communist Party.

This theory first appears at the beginning of the Board's findings, as follows (R. 20, emphasis supplied):

> "The activities of the organization have centered around the foreign born with considerable effort and attention given to the legal and propaganda defense of individuals involved in deportation and denaturalization cases. (*Infra.*) A substantial number of those defended and in whose behalf [the American Committee] has worked have been members of the Communist Party and individuals accused of being Party members. (*Infra.*)
>
> "Any one charged in deportation or denaturalization proceedings is entitled to be defended, and anyone or any organization may devote efforts to such defense. This is not to say, however, that an organization engaged in these activities, . . . may not be required to register and make the disclosures covered by the Act if *the activities have been carried out* under circumstances and *for purposes* which make the organization a 'Communist-front organization' as defined in the Act.
>
> "In this proceeding, the issues under the Attorney General's petition are . . . whether [the

> American Committee's] activities have been carried out under circumstances constituting in effect direction and control by the Communist Party of the United States, *and whether the purposes for which the activities have been carried out had the primary aims and objectives of aiding and supporting the Communist Party.*"

Thereafter, and before examining the American Committee's "Activities" (R. 53), the Board devoted itself (R. 37-53) "to consideration of [the American Committee's] organization and purpose" (R. 37), apparently recognizing no distinction between the "purpose" of the organization and the "purpose" of its activities. That this "purpose" refers to subjective motivation appears from some of the evidence the Board considered, including the conclusory opinion evidence of paid government informers as to the "purpose," "real purpose," and "true purposes" of the American Committee or Area Committees (R. 39, 41, 53). The Board repeated its view when it presented the American Committee's side of the supposed "purpose" issue as follows (R. 39):

> "[The Attorney General's] evidence on the purposes was contradicted by [the American Committee's] evidence. [The American Committee's] witness Green did not deny, and affirmatively stated, that one of the activities of the American Committee is to defend members and former members of the Communist Party involved in deportation proceedings. But Green stated that the purpose is not to give aid and support to the Communist Party, or to promote the objectives of the Party."

The Board ended this section of its Report by finding (R. 53) "that the clear preponderance of the evidence

establishes that the purposes of [the American Committee] have been to aid and support the Communist Party."

The Board then proceeded to discuss the American Committee's "Activities" (R. 53-60), which, it stated (R. 42, ftn.), "are also indicative of [the American Committee's] true purposes." In that section the Board stated (R. 57):

> "It is pertinent . . . to examine in more detail the deportee defense activities. In so doing we repeat again that it is not the fact of defending people which is relevant but the purposes for doing so."

The Board concluded the section on "Activities" by finding (R. 60):

> "The work and activities of [the American Committee] in the field of the foreign born have been clearly consistent with the purposes found *supra*, and there have been no activities inconsistent therewith. A substantial part of [the American Committee's] resources, time and efforts have been devoted to campaigns directed at the elimination of all provisions of the laws under which alien members and officers of the Communist Party are deportable, to the legal and propaganda defense of such persons when they have been actually involved in deportation proceedings, and to instigating protests against Government officials when deportation charges have been brought against Communists. [The American Committee] has consistently and strongly sought funds from the public with which to carry out its activities and has sought to win the good will of the foreign born. Obviously, these activities, particularly in opposing the laws and working to prevent the deportation of Communists, constitute aid to the Communist Party."

In its Concluding Findings, the Board stated (R. 65):

> "The weight of the credible evidence established that the purposes of [the American Committee] have in fact been to fight in many ways to prevent the deportation from the United States of members and officers of the Communist Party of the United States, and secondarily, to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party."

Although the matter is not free of ambiguity and inconsistency, we believe that we can summarize the Board's approach to the aid component as follows:

1. The presence of the aid component depends on a subjective motivation, called "purpose."

2. It is not clear whether this "purpose" refers to the "purpose" of the organization's primary activities or to some generalized "purpose" of the organization itself. Perhaps the difference is unimportant, since the "purpose" of the activities are determined not only by evidence relating to the primary activities, but also by other evidence considered illuminating of the organization's general "purpose."

3. The primary activities of the American Committee are directed to protecting the interests of the foreign born, including defending deportation and denaturalization cases of both Communists and non-Communists. The American Committee's defense of Communists is particularly relevant, it being stated in the Board's Concluding Findings (R. 65) that the primary "purpose" of the American Committee (the word "purpose" now manifestly being used in a dif-

ferent sense than before) is "to fight in many ways to prevent the deportation from the United States of members and officers of the Communist Party of the United States."

4. It is not subversive for an organization to defend persons, even if they are Communists, in deportation and denaturalization proceedings. But if the motivation ("purpose") of the defense (or perhaps of the organization) is to help the Communist Party, then the organization satisfies the aid component.

5. According to the Board's Concluding Findings (R. 65), a secondary "purpose" of the American Committee is "to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the program and aims of the Communist Party." Just what this refers to is completely unclear. As we later show (*infra*, pp. 80-83), there is not a single evidentiary finding, much less any evidence, to support this conclusion.

6. The aid component does not require that the organization aid the sinister objective or methods attributed by section 2 of the Act to the Communist Party or even that it aid the Party as such. Most likely, *any* activity of the organization can qualify it for the component, so long as there exists the requisite motivation ("purpose") to aid the Party. Or it may be that the activity must be one which can at least be said to benefit the Party indirectly, such as is the situation here where the American Committee's defense of deportation cases helps (with the connivance of the federal courts) to prevent the deportation of aliens accused by the government of being members of the Party, and some of whom actually are members.

If such a nexus is not a requisite, it is certainly useful in finding the aid component satisfied.[12]

The position taken on behalf of the Board in the court below also featured the alleged subjective motivation of the American Committee's defense of aliens accused in deportation cases of Communist Party membership. The government's brief in the court below stated (pp. 22-23) its theory as to the meaning and applicability of the aid component as follows:

> "A 'front' does not have to be operated with the purpose of advancing directly the objectives of the world Communist movement, the question is whether it acts so as to aid the 'action' organization, the Party, and with the purpose of aiding it.
>
> "It is not denied that the American Committee did defend in deportation proceedings persons charged with past or present membership in the Communist Party, and that it also defended such persons in de-naturalization cases. It also defended non-Communists. It gave advice as to naturalization procedures, and it issued booklets to inform the foreign born, like the leaflet, A. G. Ex. 20, 'Know Your Rights.'
>
> "Petitioner argues (Brief, pp. 45-46) that Section 3(4) 'cannot and does not depend on motivation; whether an organization is primarily operated for the purpose of aiding the Communist Party depends on the objective character of its activities.' That argument would read out of Sec-

[12] The obscurity of the Board's theory and findings on one of the major issues requires, without more, that its order be set aside. *S.E.C.* v. *Chenery Corp.*, 318 U.S. 80, 94; *S.E.C.* v. *Chenery Corp.*, 332 U.S. 194, 196-97; *Colorado-Wyoming Gas Co.* v. *F.P.C.*, 324 U.S. 626, 634; *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 168; Act, sec. 13A(f); sec. 8(b), Administrative Procedure Act, 5 U.S.C. 1007(b), made applicable by Act, sec. 16.

tion 3(4) the words 'for the purpose of,' which plainly imply intent. If an organization defends deportation cases with the intent to aid the Party, it comes within the words 'for the purpose of.' . . .

"Since the application of Section 3(4) depends on operation 'with the purpose,' we must look to the intention or purpose of the persons who actually direct its operations, not to the nominal heads, who do not control or direct its actual operations." [12]

C. The Court Below Construed the Aid Component to be Present Whenever An Organization Under Communist Party Control Engages in Activities Which Can Favorably Impress the Public

In applying the aid component, the court below first found (R. 78) that the American Committee "undoubtedly devoted the major portion of its efforts to contesting the deportation of aliens and promoting their naturalization. It furnished counsel and material in court cases in that area, issued statements, made pleas, and in every possible way battled in their behalf." This activity, the court held, aided and supported the Communist Party in two ways.

First, insofar as some of the defended aliens were members of the Communist Party, the American Committee thereby aided the Party itself, for, "Obviously the naturalization of its members and the prevention

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[12] That the American Committee's guilt arises from its defense of aliens charged with Communist Party membership also appears from a statement made at the administrative hearing by counsel for the Attorney General (Tr. 4720-21): "What we have attempted to do is simply to show that the American Committee defends these foreign people who are charged with present or past membership in the Communist Party, and as a means of doing that they engaged counsel and in some cases paid counsel themselves for representing these foreign born people so charged."

of their deportation were direct aims and purposes of the Communist Party" (R. 78).

The second way in which the American Committee aided the Communist Party, characterized by the court three times as "subtle" (R. 78, 80), consisted of the organization's defense of non-Communist aliens. The court's view was that this activity aided the Communist Party by improving the Party's public relations. The court explained (R. 78-80):

> "To establish itself as the champion of the foreign-born and to imprint such an image of itself on the public mind would obviously be of major benefit to the Party. But the protection of the rights of the foreign-born is not only a laudable objective; it is a basic one in this country. This is true not only theoretically and philosophically but also historically and factually. What, then, of an organization which vigorously devotes itself to the protection of the rights of all and any foreign-born who seek its help? Is it to be held a Communist front because the ends sought are Communist aims? Of course not. But, if in espousing causes which are Communist objectives, an organization does so because of Communist control and direction, is it then a Communist front? To reach an answer to this question we think we must trace the pertinent considerations to their base. . . .
>
> "In the foregoing context it is indubitably clear that any laudable, praiseworthy activity which is identified in the public mind with the Communist Party or with Communism, or is so identified as being within the community of policies advocated by the Party, is a benefit to and naturally an objective of the Party. The identification of itself with laudable causes would, of course, be a benefit to the Party, as it is to any organization. The identity of its prominent members with such causes is also

> a worthwhile project for an organization seeking power among the public. More subtle and less effective, but perhaps the only route to public acceptance available to a clandestine operator is to create a picture of a community of interest between its own causes and interests which bear public acclaim. This is indeed a subtle business, but if effectuated it would be a real and substantial aid and support to the Party. This is one of the theses of the statute. The Congress declared that the Communist movement attracts strength to itself by operating behind a facade of good deeds."

Although this passage is not without its difficulties,[14] it plainly holds that an organization which meets the control component also meets the aid component—and as a result is a Communist-front organization—if its primary activity consists of doing "good deeds" in pursuit of "laudable objectives," since the combination of Party control and good deeds aids the Communist Party by burnishing its public image.[15]

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[14] These include the mystifying equation of "laudable objectives" with "Communist aims" and "Communist causes." And see *infra*, pp. 47-48.

[15] In its opinion, the court referred to "a prominent thread of Communist interest" running through the American Committee's activities (R. 81). The court then cited various things in support of this statement. One of these, for example, was that the American Committee took the position that the statutory provisions for deporting aliens who were or had been members of the Communist Party "were premised on political opinion and threatened the freedom of all American people to their political opinions. This, of course, is Communist doctrine." (R. 82.) We cannot tell from the opinion whether these observations were intended to have relevancy to the aid component. Chief Judge Bazelon, dissenting, apparently thought they were part of the court's discussion of the control component (R. 88), and we treat the subject later (*infra*, pp. 93-96) on a like assumption.

The court's application of the aid component thus deviated from the Board's in two significant respects. (1) The court's theory that the American Committee's defense of non-Communist aliens helped the Communist Party by winning it credit for good deeds was not a basis for the Board's order. The Board's attitude toward the American Committee's defense of non-Communists was merely negative, the Board holding that such activity "is not persuasive in showing independence from Communist Party control or operation for Party purposes" (R. 58). (2) The court's theory did not, as did the Board's, rest on a probing of the American Committee's motivation.

These differences alone require a reversal of the judgment below, it being elementary that "a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency." *S.E.C.* v. *Chenery Corp.*, 332 U.S. 194, 196. See also *S.E.C.* v. *Chenery Corp.*, 318 U.S. 80.

D. The Aid Component, Properly Construed, Requires a Showing That the Organization's Activities Aid the Insurrectionary Objectives Attributed to the Communist Party By Section 2 of the Act

The divergences between the Board and the court below are over-shadowed by the common factor in their application of the aid component. Both found the component satisfied by what Chief Judge Bazelon's dissent described (R. 86) as "innocent objectives and innocent activities"—in this case, the American Committee's work in behalf of the foreign born, and particularly its defense of aliens involved in deportation cases.

In our view, the aid component does not, and for constitutional reasons cannot, comprehend innocent activities directed toward innocent objectives. This is so regardless of the motives of the organization and its leaders and whether or not the Communist Party advocates like objectives, or controls the organization, or reaps public approval for the organization's "good deeds." Properly construed, the aid component refers to aiding the insurrectionary activities ascribed to the Communist Party by section 2 of the Act. At the very most, the component can be expanded only to include direct aid to the Party itself in its organizational operations, such as recruiting Party members or giving it financial support. It does not include, as the majority held, such attenuated and speculative indirect benefits as improving the public "image" of the Party (R. 78) by promoting "laudable causes" (R. 80). Nor does it include assistance to individual Party members in their personal problems (and still less aid to non-Communists) merely because the Party as an organization may indirectly benefit therefrom. Defending from deportation an individual who is, or is accused of being or having been, a Communist is not aid to the Communist Party for the purposes of the Act, any more than is medical treatment of such an individual when he is ill.

If we are correct, the judgment below must be reversed and the order of the Board set aside. This is so not only because the Board and the court applied erroneous legal theories, but also because there is no basis in the evidence or the evidentiary findings to attribute to the American Committee the kind of aiding activity required by section 3(4)(B).

Our view is supported by conventional methods of statutory construction.

1. Considerations of policy, common sense and the over-all legislative objective condemn the construction of the Board and the court below. The Act, a self-proclaimed measure for the protection of the national security, is misused when invoked against a group, regardless of its motivations, which does not imperil our security and engages only in "laudable" activities.

A final registration order, together with the attendant sanctions on the organization and its members (*supra*, p. 5), is obviously a death sentence for any cause organization. The organization cannot retain members and contributors, win public support, find an audience for its views, or even hire a hall. The organization which has here been condemned to death by registration has for over thirty years rendered unexcelled services in defending the foreign born from the rigors and inhumanities which mar our immigration laws and their administration. Not the least of these services has been the able defense of aliens who could find no other defender because of the political nature of the deportation charge against them. (*Supra*, pp. 10-12.)

Yet the American Committee was condemned not in spite of its contributions to society, but precisely because of them. For it was the American Committee's defense of the foreign born, particularly in legal proceedings, which was held to satisfy the Act's requirement that Communist-front organizations be primarily operated for the purpose of giving aid and support to the Communist Party. One may well apply to such a construction Mr. Justice Clark's criticism of a com-

parable, hypothetical interpretation of a state statute aimed at activities intended to "aid" the Communist Party. "To so interpret the language of the Act is to extract more sunbeams from cucumbers than did Gulliver's mad scientist." *Baggett* v. *Bullitt*, 377 U. S. 360, 383 (dissenting opinion).

It is an offensive concept that the American Committee aids and supports the Communist Party for the purpose of the aid component by defending the deportation and denaturalization cases of foreign-born members of the Party. On the contrary, the defense of unpopular individuals is in aid of the highest American traditions and the administration of justice. If the American Committee aided the Communist Party by defending Charles Rowoldt and Peter Harisiades from deportation, what are we to say of the Court which voided one of the deportation orders and of the dissenting Justices who would have done the same to the other? *Rowoldt* v. *Perfetto*, 355 U.S. 115; *Harisiades* v. *Shaughnessy*, 342 U.S. 580. Did Wendell Willkie aid the Communist Party by defending and winning in this Court the denaturalization case against William Schneiderman, a leading Communist official? *Schneiderman* v. *United States*, 320 U.S. 118. The *New York Times* thought not. It said in an editorial, "Mr. Willkie, for his action, deserves the thanks of all Americans" (R. Ex. 179, p. 8).

The correct analysis was given in the testimony of Professor Louise Pettibone Smith, the honorary chairman of the American Committee (Tr. 4144-45):

> "Q. Now, when the American Committee defends Communists or persons accused of being Communists, does it defend the principles of Communism? A. We are not defending principles of

> anything except justice and fair play. We are defending people and we are attempting to hold in a period when that seems to be somewhat difficult, the old tradition of this country of freedom of speech . . . free assembly and the right of petition."

The fact is that our system of justice has been discredited by the persecution of an organization for defending persons in legal proceedings, particularly when the persecution is intigated and led by the governmental department which is the adversary in those proceedings. Moreover, by their expansive interpretation of the aid component to reach laudable and constitutionally protected activities, the Board and the court below have magnified the constitutional defects of the Act (see *infra*, pp. 108-09). Such an application of the Act serves no security interest and wantonly sacrifices values which our society professes to cherish.

By destroying the American Committee, the decision below will deprive the entire foreign-born community of its most principled and skilled defender. And considering the fate of the American Committee, no other organization will be so foolhardy as to replace it in that role. Thus one ignoble result of this case will be to facilitate the prosecution of deportation and denaturalization cases by making it difficult or impossible for the accused to obtain counsel and other assistance.[16]

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[16] Professor Chafee has observed: "The American Committee for Protection of Foreign Born has supplied competent lawyers to many aliens arrested on deportation charges, who might otherwise have been defenseless and who had ever so much to lose from mistaken decisions. Whatever objections can be made to some of the activities or backers of enterprises like these, it is plain that if the government pulls up the tares, it will pull up a good deal of wheat too." Chafee, *The Blessings of Liberty* (1956) 134.

Is the national security really served by this laying of a foundation for future Palmer raids?

The decision below, if it stands, will adversely affect all cause organizations, no matter what their field of operation. The decision authorizes the government to lay a heavy hand on such groups and their members for doing nothing more than using lawful means to promote objectives which are considered commendable by many or most of the American people. So the transgression of the American Committee is its work by peaceable methods towards an end described by the court below as "laudable"—"the protection of the rights of all and any foreign-born who seek its help" (R. 79). By the same token, as Chief Judge Bazelon pointed out in his dissent, the Act can be used against any organization with "innocent objectives and innocent activities," including "promoting public school integration" (R. 86). The court below, bemused by a Madison Avenue vision of the Communist movement busily improving its public image "by operating behind a facade of good deeds" (R. 80), has made the doing of good deeds a dangerous occupation.

The Board, though apparently not the court, ruled that good deeds are visited by the Act's reprisals only when motivated by a desire to help the Communist Party. But no one can feel safe in joining an organization, no matter how "laudable" all its activities, if the organization can be officially condemned as a Communist-front on the ground that it surreptitiously entertains a pro-Communist motivation. Especially is this so when the inquiry into the organization's motives—surely a peculiar subject—is conducted by an agency which is organically suspicious of all agitation against the status quo. And even without Board

proceedings, the right of association is impaired by a decision which subjects all cause organizations, no matter how benign their activities, to federal surveillance designed to detect hidden motivations.

Nor can much, if any, comfort be derived from the fact that the Act by its terms applies only to organizations which, even if they do good deeds, are substantially controlled by the Communist Party. The Board's compulsion to credit the stale narratives and conclusory opinions of unreliable, paid informers, always in inexhaustible supply, make it child's play to demonstrate such control to the Board's satisfaction whenever the government is intent on doing so (see *supra*, pp. 64-71, 87-88).[17] And if the organization survives the Board proceeding, it may, if this case is a sample, obtain an inadequate, politicized judicial review from a court which has such singular notions as that the protection of the rights of the foreign born is a "Communist aim" (R. 79) and that viewing political deportations as a threat to American freedom "of course, is Communist doctrine" (R. 82).

In short, the Communist-front provisions of the Act as construed and applied by the Board and the court below do not protect the national security, produce offensive results, and endanger the right of association.

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[17] For an example of how readily organizations can be condemned as being under Communist influence, see *Washington Daily News*, Aug. 18, 1964: "John H. Rousselot, National Director of Public Information for the John Birch Society, said here last night that the Communist Party was providing 'decisive leadership in the Negro civil rights movement' and that top officers of leading civil rights organizations were associated with hundreds of communist front organizations. * * * Mr. Rousselot . . . cited as his sources the House Un-American Activities Committee, Joint Committee of the Tennessee Legislature and an Investigating Committee of the Texas House of Representatives."

2. The terms of the Act do not compel such untoward results and are inconsistent with the construction of the Board and the court below.

(a) By definition (sec. 3(4)), a Communist-front organization must be controlled by a Communist-action organization and "primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title." A Communist-action organization is in turn defined (sec. 3(3)) as one which is under Soviet control and "operates primarily to advance the objectives of such world Communist movement as referred to in section 2."

Since the objectives attributed to the world Communist movement by section 2 are all sinister, such too must be the operational activities of a Communist-action organization. *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 55, accepted as the fair construction of the "objectives component" of a Communist-action organization that the organization operate to advance the following objectives: "(a) overthrow of existing government by any means necessary, including force and violence, (b) establishment of a Communist totalitarian dictatorship, (c) which will be subservient to the Soviet Union."[18]

The sensible reading of "aid and support to a Communist-action organization," as used in section 3(4)(B), is aid to such an organization in the distinctive activities which characterize it as an action organiza-

[18] The Court found it unnecessary to decide whether an organization can satisfy this definition by operating to advance only one or two of the three described objectives (at 55).

tion. To read the language otherwise permits an "absurdity" of "possibilities" (*Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 286). The sensible reading is not satisfied by an organization whose "aid" to the Communist Party is confined to innocent activities in pursuit of innocent objectives—in this case, defending the rights of the foreign-born, Communist and non-Communist, by litigation and leaflets.

Under section 3(3), and its construction by this Court in the *Communist Party* case, *supra* at 55, the Communist Party could not be required to register under the Act as a Communist-action organization unless it were found to engage in the specific type of baneful conduct described above. The Party could not, for example, be required to register if all it did was to "aid" the Soviet Union (and its public image) by helping to promote Soviet purchases of wheat or the performances of Soviet musicians and dance groups in this country. It would indeed be anomalous if the Act were harsher and less selective toward organizations other than the Communist Party by requiring them to register for engaging in innocent activities.

(b) The legislative history confirms that Congress was not seeking to hit innocent activity. The House Report (No. 2980, 81st Cong., 2d Sess., Aug. 22, 1950) on the bill which became the Act (H. R. 9490), after stating (pp. 2-3) that the proposed legislation involved "a most perplexing and difficult problem," added (p. 3): "How to protect freedom from those who would destroy it, without infringing upon the freedom of all our people, presents a question fraught with constitutional and practical difficulties." The Report then said (at p. 3, emphasis supplied):

> "In considering the problem, the committee found it necessary at the outset *to distinguish those*

> ***features of Communist activity against which legislation cannot and should not be directed from those in the case of which legislative restraints are clearly practicable and necessary.*** Communism as an economic, social, and political theory is one thing. Communism as a secret conspiracy, dedicated to subverting the interests of the United States to that of a foreign dictatorship, is another."

By holding the Act applicable to organizations which, even if Communist controlled, are engaged only in "laudable activities," the Board and the court below obviously failed "to distinguish those features of communist activity against which legislation cannot and should not be directed" from those features which the Act seeks to control.

(c) The construction of the Board and the court below eliminates the aid component of section 3(4). By their construction, any organization satisfies the aid component if it does things which in any way benefit, or are intended to benefit, the Communist Party. Since the Party would obviously not control any other kind of organization, the two components of the definition are reduced to one—the presence of Party control.

(d) The view of the Board and the court makes section 3(4) inconsistent with the sanction provisions of the Act and sections 2(7) and 13(f)(3). Our view harmonizes the provisions.

First, as Chief Judge Bazelon pointed out (R. 86), the severity of the sanctions levied by the Act on members of Communist-front organizations, most of whom

will not be Communists,[19] "shows that Congress had no intention of inflicting them on otherwise innocent people merely because of membership in otherwise innocent organizations that the Communist Party uses to advance an innocent aim."[20]

Secondly, section 2(7) recites, as the justification for the Communist-front provisions, that Communist Parties operate through Communist-front organizations "in carrying on the activities referred to in paragraph" 2(6). The activities described in 2(6) are conspiratorial efforts to seize government power and set up foreign-controlled Communist totalitarian dictatorships. Congress expressed no concern about organizations which engage solely in non-dangerous activities, such as the legal defense of deportation cases or the doing of other good deeds.

Section 2(7) also recites that Communist-front organizations conceal the facts as to their true character and are thereby able to obtain a public support they would not otherwise get. The court's public relations theory is manifestly inconsistent with this recitation. For how is the Communist Party "identified in the public mind" (R. 80) with the beneficent activities of an organization which, like the American Committee, has always stoutly maintained that it is controlled by

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[19] Judge Prettyman, the author of the majority opinion below, has elsewhere recognized that "almost by definition, many members of a Communist front are unsympathetic to Communist aims or Communist philosophy." *National Council of American-Societ Friendship* v. *S.A.C.B.*, 322 F. 2d 375, 379.

[20] The fact that some or all of the sanction provisions are or may be unconstitutional (*Aptheker* v. *Secretary of State*, 378 U.S. 500) does not, of course, detract from their utility in illuminating the Congressional intent of accompanying provisions.

nobody other than itself and promotes no policies except its own (see, e.g., R. 8-9, 12, 39, 42, 56)? Indeed, it is only the Board and the court below who have improved the image of the Communist Party by giving it credit for the American Committee's good deeds.

Finally, section 13(f)(3) requires the Board, in determining whether an organization is a Communist-front, to consider "the extent to which its funds, resources or personnel are used to further the objectives of any Communist action organization, Communist foreign government, or the world Communist movement referred to in section 2." The only objectives ascribed to Communist-action organizations by section 2 are the sinister ones mentioned. Section 13(f)(3) serves no function whatsoever if the aid component can be satisfied by a furthering of "laudable" objectives.

(e) There is no substance to the Board's view (*supra*, p. 28) that the word "purpose" in section 3(4)(B) makes the aid component turn solely on the subjective motivation of the organization, without regard to the nature of its activities. "Purpose" has an objective, as well as subjective, meaning. One of the dictionary definitions of the word is "an object, *effect, or result* aimed at, intended, *or attained*," the objective part of this definition being illustrated by the expression, "energy applied to little purpose" (Webster's *Third International Dictionary*, 1961).[21]

The Act is supposedly concerned with threats to the national security. It makes no sense to classify actions as dangerous or non-dangerous according to their

[21] And cf. Leontes' observation, "Hermione, my dearest, thou never spok'st to better purpose." *The Winter's Tale*, Act I, scene ii.

motivation rather than according to their nature. Nor is it rational to investigate the motivation of an organization comprised of individuals of varying motives.

The Act provides for Board proceedings against three kinds of organizations. These are Communist-action organizations, defined in section 3(3); Communist-front organizations, defined in section 3(4); and Communist-infiltrated organizations, defined in section 3(4A). There is a common pattern to the definitions. Each consists of two components, the first of which is a control component, the second an aid component. The second component of section 3(3) is operation "primarily to advance the objectives of such world Communist movement." The second component of section 3(4A) is serving "as a means for (i) the giving of aid or support to" any Communist-action organization, Communist foreign government, or the world Communist movement, "or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material force required by its Armed Forces."

Thus in each of the two definitions which are cognate to section 3(4), the second component refers to the organization's aiding *activities*. Since the word "purpose" is happily not used, there is not the slightest basis for making the 3(3) and 3(4A) definitions turn on the organization's motives. By making motive the key factor in section 3(4), the Board destroys the symmetry of the Act on no better basis than an artless reading of the words "for the purpose of."

II. THE BOARD AND THE COURT BELOW MISCONSTRUED AND UNCONSTITUTIONALLY APPLIED THE ACT BY IMPOSING LIABILITY ON THE AMERICAN COMMITTEE FOR MATTERS FOUND CONCERNING OTHER ORGANIZATIONS (THE AREA COMMITTEES) WITH WHICH IT COOPERATED BUT WHICH IT DID NOT CONTROL.

A. The American Committee Was Held Liable for Matters Found Against the Area Committees Despite the Absence of Evidence That It Controlled the Latter Groups.

Much of the evidentiary findings in the Board's Report concern various of the Area Committees. These findings were relied on by the Board as bases for its conclusions adverse to the American Committee on both the control and aid components. The findings refer to such things as the purposes of various Area Committees, Communist Party interest and participation in their activities, and Communist Party membership of officers of Area Committees (R. 33-35, 38-39, 61). There is no finding and no evidence that the American Committee knew of the matters so found. In view of the prejudicial nature and volume of the findings, it is incontestable that the order of the Board must be set aside if the Board erred in holding the American Committee liable for the actions and personnel of the Area Committees.

The evidence from which the Board derived the findings was introduced by the Attorney General on the assumption that the Area Committees were local branches of, and directed by, a national organization, the American Committee (R. 3, 21). As we have seen, however, despite instances of erratic terminology, the Area Committees were not constituent elements of the American Committee, and the American Committee, though it cooperated with them, neither had nor exercised any control over them. Accordingly, the American Committee did not attempt to rebut the Attorney

General's evidence concerning Communist Party influence in or control over the Area Committees, but took the position that it could not be held liable for the acts and personnel of independent organizations with which it cooperated but which it did not control. (*Supra*, pp. 7-8, 14-15.)[22]

The Board's Report did not find that the Area Committees were constituent components of the American Committee. Nor did it find in the teeth of the evidence that the Area Committees were controlled by or subject to the control of the American Committee. The basis on which the Board predicated liability of the American Committee for conduct found against the Area Committees was that the American Committee and the Area Committees, by reason of their cooperation, constituted a single "organization" as defined by the Act. So the Board found (R. 27):

> "We find on the entire record that the American Committee and the various area or local committees are associated together for joint action on particular subjects. Together they constitute a voluntary association and one organization within the meaning of the term 'organization' set forth in section 3(2) of the statute."

Section 3(2), on which the Board finding is predicated, defines the term "organization" as follows:

> "Section 3. For the purposes of this title—
>
> * * * *

[22] This is not to say that we agree with the Board's findings concerning the Area Committees, which seem to us to exhibit the same faults as its findings concerning the American Committee proper.

> (2) The term 'organization' means an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects."

The court below likewise held that the evidence against the Area Committees was to be considered against the American Committee, but on grounds not advanced by the Board. Although the point was fully briefed, the court did not say whether the Board was correct in its interpretation of section 3(2). Instead, the court stated (R. 77):

> "There is much discussion in this record, and here, as to whether these local groups were autonomous organizations[23] or were integral parts of our petitioner, the national Committee. We think the point is unimportant. It is abundantly clear that, whatever the technicalities may be as to the nature of these unincorporated associations, they were intermeshed with the national group, not only in policies but in operation."

We do not know, in the absence of any exegesis, precisely what the court meant by "intermeshed," but the term seems to denote something different than the phraseology of section 3(2), "associated together for joint action on any subject or subjects," on which the Board relied. In any event, in the light of accepted principles of judicial review (*supra*, p. 37), we believe that the question here must be defined not in terms of "intermeshing," whatever that means, but according to

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[23] This is a misstatement of our position, which was that the Area Committees were independent, not "autonomous," organizations.

the Board's legal theory. The question is, therefore, whether, by reason of section 3(2), independent organizations which associate together for joint action on any subject or subjects constitute thereby one organization, so that each of the organizations may be held liable under the Act on evidence relating to the actions, nature and personnel of the other. The correct answer is clearly in the negative.

B. The Imposition of This Vicarious Liability Was An Unconstitutional Application of the Act

The Board's theory extends the repugnant doctrine of guilt by association beyond all known or reasonable limits and is thus contrary to deep-grained traditions and plainly unconstitutional. Vicarious liability may be imposed, as in a principal-agent situation, where one person controls another. But here, as we have seen, there was no finding that the American Committee controlled the Area Committees, and all the evidence is to the contrary.[24]

Furthermore, when vicarious liability is imposed on participants in a common enterprise—as partners, joint venturers, or conspirators—the liability is limited to conduct within the scope of the enterprise defined by an express or implied agreement of the participants. Likewise, in the principal-agent case, the vicarious liability of the principal is limited to responsiblity for conduct of the agent within the scope of his au-

[24] Even in a principal-agent situation, the agent is not vicariously liable for the conduct of the principal and other agents of the principal. But under the Board's one-organization theory, each Area Committee is liable for the acts and personnel of the American Committee and of all the other Area Committees. Yet it was never claimed that any Area Committee controls the American Committee or other Area Committees.

thority and while on business of the principal. Under the Board's theory, however, whenever two organizations act together "on any subject or subjects," each is charged with responsibility (a) for all acts of the other organization, including those not connected with the specific enterprise in which they are cooperating, and (b) even for the political affiliations of the other's officers!

As everybody knows, the National Association for the Advancement of Colored People, the Committee on Racial Equality, the Student Non-Violent Coordinating Committee, and various other groups from time to time cooperate in projects to promote integration. Does this mean that if a Communist is found in any one of these groups, all the others are equally responsible for the purposes of the Act?

The Act is on its face a deterrent to the constitutional right of individuals to associate in organizations. The Board's construction increases this deterrence immeasurably by making it dangerous for organizations to associate or cooperate with other organizations. This fact in turn further inhibits intra-organizational association. For an individual cannot feel safe in joining an organization no matter how sure he is of its purity; he must now have the same confidence about all other organizations with which his may possibly cooperate, even if only "temporarily" and for the purposes of action on a single "subject." Thus the Board's construction interferes with association in and by organizations which by no stretch of the imagination are under Communist control or serve Communist ends, and the exposure of whose affairs cannot possibly serve the purposes which the Act ascribes to its registration provisions.

The Board's doctrine even goes beyond the lay tendency to judge persons according to the company they keep. For the Board did not find the American Committee to be of dubious character by reason of association with the Area Committees. Instead, under the one-organization theory, the Board attributed to the American Committee specific conduct found to have been engaged in by the Area Committees and their officers—and this even without any finding that the American Committee knew of such conduct.

The Board's application of the Act in this respect violates the due process clause of the Fifth Amendment by imposing vicarious liability and disabilities for conduct in which those held liable did not engage, of which they were not aware, and which cannot be imputed to them by any reasonable or conventional standards. Cf. *Aptheker* v. *Secretary of State*, 378 U.S. 500; *Wieman* v. *Updegraff*, 344 U.S. 183.

The Board's application of the Act in this respect also violates the First Amendment by creating a "serious encroachment" on the right of association which is not justified by a "compelling" governmental interest (*N.A.A.C.P.* v. *Button*, 371 U.S. 415, 438; *Bates* v. *Little Rock*, 361 U.S. 516, 524), and which goes "far beyond what [is] necessary to achieve a legitimate governmental purpose" (*Shelton* v. *Tucker*, 364 U.S. 479, 489).

Under the Board's construction, its registration order against the American Committee also applies to the Area Committees, since these constitute a "single organization" with the American Committee. The Area Committees had no notice of the proceeding, were not parties thereto, and did not participate thereon. Yet they have incurred, without benefit of hearing,

an official governmental defamation and the onerous obligation of registering. Thereby the Board's order denies the Area Committees procedural due process. See *Renaud* v. *Abbott*, 116 U.S. 277, 288; *Cole* v. *Arkansas*, 333 U.S. 196, 201.

C. The Board's Construction Is Not Supported by the Language of Section 3(2)

Even without regard to constitutional objections, the Board's theory cannot be derived, as the Board thought, from the language of section 3(2). The obvious purpose of that section was to make the Act apply to all groups whether or not they were legalistic "entities" and even though informally organized, such as groups without by-laws, constitutions or defined membership requirements. It is foreign to this purpose to treat several distinct groups as one merely because they cooperate.

Section 3(2) refers to "a group of persons . . . associated together for joint action." The group is single. The word "associated" modifies the persons who constitute the group, not the group itself. The Board's version misreads the section as referring to several groups associated with each other instead of persons associated in a single group.

If the Board is right, registration is impossible. If several independent groups are a single organization for the purpose of liability, then they are, by the same statutory definition, a single organization for the purpose of complying with the registration requirements of section 7. But the officers of organization *A* do not have, and cannot obtain without having control over the other organizations, the information concerning

organizations *B, C, D, E,* etc. which must be supplied in the registration statement required by section 7.[25]

Finally, the Board's construction makes pointless the Communist-front provisions of the Act. Under the section 3(4) definition, a Communist-front organization is, at a minimum, necessarily "associated together" with the Communist Party "for joint action on any subject or subjects." It follows from the Board's theory that all Communist-front organizations are ipso facto one organization with the Communist Party. Thereby they share the latter's existing obligation to register as a Communist-action organization, especially since the definition of a Communist-action organization expressly applies to "any section, branch, fraction or cell" of any such organization which has not registered (sec. 3(3)(b)). The Board's theory thus makes superfluous the Act's provisions for separate proceedings against, and separate registrations by, Communist fronts.

III. THE BOARD AND THE COURT BELOW OTHERWISE MISAPPLIED THE ACT AND RELIED ON IRRELEVANT CONSIDERATIONS AND INCOMPETENT EVIDENCE TO AN EXTENT WHICH DENIED THE AMERICAN COMMITTEE BOTH A FAIR HEARING AND AN ADEQUATE JUDICIAL REVIEW.

The Board and the court below committed numerous prejudicial errors in addition to their mistaken reliance on evidence concerning Area Committees. Any one of these would require a reversal. In their totality they demonstrate that the American Committee was denied both a fair hearing and an adequate judicial review,

[25] For like reasons, an accused organization is not equipped to defend all other organizations with which it has cooperated. Yet by the Board's theory, it is faced with the necessity of doing so in order to defend itself.

that the Board and the court misapplied the provisions of the Act, and that the Board's order cannot be supported by any fair evaluation of the evidence.

A. The Board's Conclusion as to the American Committee's "Purpose" Otherwise Rests on Irrelevant and Incompetent Evidence and Misapplications of the Act

We have already seen that the Board misconstrued and misapplied the Act by making the aid component depend on the American Committee's subjective motivation, called "purpose." But even if the Board is right in its legal theory, its conclusion that the American Committee's "purpose" was to aid the Communist Party must be set aside because it derives from an incredible melange of irrelevancies, distortions, omissions, and incompetent evidence. In what follows, we examine all the subsidiary findings from which the Board derives its "purpose" conclusion, but not in the same order in which the findings appear in the Report.[26]

1. Defense Work Beyond Normal Purposes.

A major prop for the Board's conclusion as to the American Committee's true "purpose" is supplied by findings that the organization went beyond its avowed purposes by activity in the cases of Estes, Green, and Eisler.

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[26] The Board's evidentiary findings on the American Committee's "purpose" are contained principally in the section of its Report entitled "Organization and Purposes" (R. 35-53). The section so intermingles findings about the American Committee with findings about the Communist Party as to require readers to be vigilant against the possibility of attributing to the American Committee matters found about the Party. We will not trouble to examine the latter.

(a) *The Estes and Green cases.*

The Board finds (R. 42) that the American Committee "went beyond the normal defense of the foreign born by supporting Communist Party functionaries Fred Estes and James Green," who were found in contempt of court following their refusals to produce evidence in deportation proceedings as to whether certain aliens were members of the Communist Party.

Even if it were true that the American Committee supported Estes and Green in their contempt cases, this would not be inconsistent with a purpose to defend the foreign born, since the contempt stemmed from refusal to inform on aliens facing possible deportation charges. Leaving this aside, the finding that such support was given is absurd.

The *only* evidence on which this finding is based is an item in the January 1950 issue of the American Committee's news periodical, *The Lamp* (P. Ex. 210, p. 2).[27] The item reads in full:

> "IMMIGRATION SERVICE USES NON-CITIZENS IN TEXAS AS BASE FOR ATTACK ON CITIZENS.
>
> "The non-citizen population of Texas is less than two percent of the total population of the state. During the past month, however, the Immigration and Naturalization [sic] in Texas has unleased an 'anti-alien' hysteria which is resulting in the threatened jailing of American citizens.

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[27] The government lodged with the court below, but not as part of the formal record, a copy of the Board's Report annotated to the record of the administrative hearing. The finding of support for Estes and Green is annotated only to P. Ex. 210. No other reference to those individuals appears in the record.

"Dallas

"On December 20, Fred Estes, an American citizen, local Communist Party organizer, was sentenced to 30 days in jail and a $100 fine by Federal District Judge Atwell for refusing to produce his organization's books at immigration hearings held to establish whether seven non-citizen residents of Dallas are members of the Communist Party. An appeal against Judge Atwell's order and sentence for 'contempt of court' is pending.

"Houston

"On December 23, James J. Green, Texas secretary of the Communist Party, was found in contempt of court and sentenced to sit in jail until he testifies before a hearing of the Immigration and Naturalization Service as to whether two non-citizen residents of Houston are members of his organization. The two non-citizens are Mr. and Mrs. Kurt Wittenberg. The Service started a public campaign against them when they applied for permission to return to Germany, from which they fled before the second World War as anti-Nazi refugees."

It is obvious that this news item supplies not the least foundation for the Board's finding that the American Committee "supported" Estes and Green and thereby exceeded the "normal defense of the foreign born." On the contrary, the finding is so preposterous as to illustrate the Board's bias.[28] The court below failed to notice the Board's reliance on this finding although the matter was briefed. Thus the court once again failed its obligation of judicial review.

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[28] The real "support" for Estes was given by the Fifth Circuit, which reversed his contempt conviction. *Estes* v. *Potter*, 183 F. 2d 865. We have not found a report of Green's case.

(b) *The Eisler case.*

The Board found (R. 43) that the American Committee went "beyond" its "normal, avowed purposes" by filing "a legal brief in [Eisler's] behalf in the contempt of Congress case, in addition to defending him in the deportation matters." The Board also found (R. 43-44) that by campaigning to let Eisler leave the country, the American Committee seemed to "exceed" its "avowed purpose" and "advanced positions similar to those advanced by the Communist Party." These findings loom so large that Eisler's is the one case specifically named in the Board's Concluding Findings (R. 66). And the court below offered as its first evidence of "a prominent thread of Communist interest" in the American Committee's activities that the organization "took vigorous positions in regard to the Gerhardt Eisler affair" (R. 81). The court explained (R. 81-82): "Eisler was foreign-born, to be sure, but this was not a naturalization or deportation matter; quite the contrary, in fact. The controversey which swirled about Eisler concerned his membership in the Communist Party and his refusal to testify before the House Committee."

The versions of both the Board and the court below constitute a distortion of the evidence.

The only evidence of any American Committee participation in Eisler's contempt case consists of a news item in the March-April 1949 issue of *The Lamp* (P. Ex. 202, p 2). It is there reported that the American Committee filed with this Court an amicus curiae brief in Eisler's contempt case, arguing "that Gerhart Eisler did not have to answer questions put to him by the Committee on Un-American Activities of the House of

Representatives since, at the time he was brought before the House Committee, he was under detention as a 'dangerous enemy alien' at the orders of Attorney General Tom Clark and therefore could be considered a prisoner of war. The [amicus] brief points out that as a prisoner of war, Gerhart Eisler was entitled to not answer questions put to him."[29] Since, as the Board and the court failed to note, the amicus brief consisted of a legal argument of the rights of interned aliens, it was obviously within the American Committee's "avowed purpose" to protect the interests of the foreign born.

Equally baseless is the Board's finding, ignored by the court below, that the American Committee may have exceeded its avowed purposes by campaigning "to avoid [Eisler's] being held on deportation charges and immediately to let him leave the country" (R. 44).

The uncontradicted evidence on this subject is as follows. On February 2, 1948, the Attorney General arrested Eisler on a deportation warrant and held him on Ellis Island without bail pending the deportation hearing. Eisler requested the American Committee to represent him in the deportation proceeding and to seek to obtain his release on bail. The American Committee agreed to do so, as it would have done in any other case. It then learned from Eisler that he did not

[29] This Court granted certiorari in Eisler's contempt case (335 U.S. 857), but later dismissed the writ when Eisler fled the country after argument but before decision. *Eisler* v. *United States*, 338 U.S. 189, 338 U.S. 883. An examination of the Court's records will show that the amicus brief filed for the American Committee argued that Eisler, as an interned enemy alien, was entitled under international law to the rights of a prisoner of war and therefore was immune from coercive interrogation under Article 5 of the Geneva Convention on Prisoners of War, 47 Stat. 2030.

want to resist deportation, but on the contrary wanted to leave the United States and return to Germany. What prevented his return was the Attorney General's refusal to allow him to leave. In fact, the only reason Eisler was in the United States at all was that he had entered on a transit visa en route to Mexico, and the United States government had refused to allow him to continue his journey. Not without cause, the American Committee considered that the holding without bail of a man who was anxious to leave the country was not a good faith deportation proceeding, but was an attempt to harass Eisler and thereby to intimidate the foreign-born. The National Conference of the American Committee on December 11 and 12, 1948, adopted a resolution entitled "Let Gerhart Eisler go home," following which the American Committee campaigned in favor of Eisler's being permitted to depart. In the meantime, the American Committee instituted legal proceedings and obtained Eisler's release on bail. (Tr. 5429, 5432, 5436-42; P. Ex. 200; P. Ex. 244, p. 2; P. Ex. 194, p. 3; see *U. S. ex rel Doyle et al.* v. *District Director,* 169 F. 2d 753.)

Thus the efforts of the American Committee in this matter were (1) to secure an alien's release on bail pending his deportation hearing and (2) to obtain for an alien who wished to depart the right to leave the country. These endeavors were clearly legitimate and within the avowed purposes of the organization. The Board represented (R. 66) that advocating that an alien be permitted to leave the country was inconsistent with the American Committee's policy against deportations. But clearly there is no inconsistency in advocating that aliens be able to stay or leave as they themselves decide.

The American Committee defended 4,000 to 5,000 cases over a 20 year period (Tr. 6112-13). The Board's inability to carp about more than the Eisler case and its contrived finding of "support" for Estes and Green are a testament to the fact that the American Committee has steadfastly adhered to its purposes in its defense work.

2. Incompetent Conclusory Testimony of Lautner.

In support of its "purpose" conclusion, the Board found (R. 40):

> "[The Attorney General's] witness Lautner testified, without contradiction or denial, and the testimony is credited, that Abner Green, and also Harriet Barron, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to the American Committee, and 'fitted' Party policies into the functions of the American Committee."

The court below relied heavily on this finding, stating (R. 76):

> "There was direct and specific evidence that Green and Barron attended Party meetings, were advised of Party policies, and carried out these policies in the work of the Committee."

But contrary to the Board, which utilized the finding only to support its conclusion on the aid component, the court utilized the finding only in support of the control component (see R. 75), thereby again failing to observe the correct function of judicial review.

It should first be observed that the Board's statement that the testimony was "without contradiction or

denial" is belied by the Board's own later statement (R. 56; and see Tr. 4874):

> "Green further testified that the national conferences have been the only body of the American Committee that have ever set the policies of the organization; that the conferences elected the officers; and that the policies and decisions of the national conferences have been binding on the officers of the American Committee."

We later see (*infra*, pp. 98-102) that it was error to rely on any of Lautner's testimony because of the curtailment of his cross-examination. Leaving aside this fact, the finding rests on incompetent evidence. The finding derives exclusively from the following passage in Lautner's direct examination (R. 107-08):

> "Q. Do you know whether or not the American Committee for the Protection of Foreign Born during the time you were a member of the Party [1929-1950—R. 67] had any connection whatsoever with the Party, speaking of the Communist Party?
>
> * * * * * *
>
> The Witness: Yes.
>
> * * * * * *
>
> Q. What connection, if any, did it have?
>
> Mr. Forer [counsel for the American Committee]: I object. It is too general a question.
>
> Mr. Morrisey [hearing examiner]: The objection is overruled.
>
> The witness: The functionaries of the Protection of the Foreign Born, the top functionaries, like Abner Green and Harriet Baron, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organization.

> Mr. Forer: I move to strike that testimony as being completely opinion and conclusory, or at least that part of the answer about 'had carried out Party policies' and what follows it, as being conclusory and opinion testimony.
>
> Mr. Morrisey: The motion to strike will be denied."

The objection and motion to strike were obviously well taken. Lautner never testified to what was said or occurred at the Communist Party meetings to which he referred or what were the Party polcies involved. There was no foundation enabling him to testify as to whether Party policies were carried out by or fitted into the functions of the American Committee. To the contrary, as Lautner acknowledged on cross-examination, he never attended any of the American Committee's meetings or affairs and was not acquainted with its work (Tr. 1108-10, 1138-43, 1176).

No organization is safe if it can be condemned on such conclusory, unsupported testimony from an unqualified witness, particularly when it comes from a hostile informer in the pay of the adversary and the tribunal and reviewing court choose to ignore the contradictory testimony of a witness who is qualified to speak about the organization. It was inexcusable for the court to characterize this bit of Lautner's testimony at "direct and specific evidence" (R. 76).

Moreover, as both the Board and the court failed to notice, Lautner's testimony was rebutted, and Abner Green's contrary testimony corroborated, by the inability of the Board to point to any instance in which the American Committee or Green or Barron ever did anything contrary to the policies of the organization as established by its constitution and the

resolutions and decisions of its governing body, the Annual Convention.[30]

3. Incompetent Opinion Testimony.

The Board relied (R. 38-39) on testimony of the Attorney General's paid informers Baldwin, Glatis and Lautner that the "purpose" of the Michigan Committee for Protection of Foreign Born (Baldwin, R. 123), the New England Committee for Protection of Foreign Born (Glatis, Tr. 774), and the American Committee (Lautner, Tr. 1004) was to defend members of the Communist Party involved in deportation or naturalization difficulities.

Reliance on the testimony was erroneous on several grounds, even leaving aside the fact that the Baldwin and Glatis testimony referred to Area Committees only (see *supra,* pp. 50-57). The testimony was opinion testimony. It was, therefore, valueless and incompetent unless (a) it was based on facts disclosed in the record and (b) the witnesses had first-hand knowledge of facts from which the opinion could legitimately be drawn. McCormick, *Evidence* (1954) § 11; *Giant Food Stores, Inc.* v. *Fine,* 269 F. 2d 542. The testimony satisfied neither requirement. Neither the Board's Report nor the record discloses facts on which the witnesses' opinions were based, and none of them was in a position to observe the relevant facts. Baldwin never attended any affair of the Michigan Committee or par-

[30] The court stated (R. 75) that, "The evidence was overwhelming that the board of directors and the annual conferences were perfunctory, as such boards and conventions so frequently are in unincorporated associations." The Board made no such finding; the court cites none of the "overwhelming" evidence; and we state categorically that there is no evidence in the record to support the court's characterization.

ticipated in its activities (Tr. 1538-40). Lautner never attended any meeting or affair of the American Committee, never participated in its activities, and had no knowledge of its work (Tr. 1008-10, 1138-43, 1176). Glatis' opinion testimony was based, as the Board finds (R. 38-39), on his attendance at three meetings of the New England Committee, literature received from the New England Committee, and "conversations during my Communist Party membership" (Tr. 774). He gave no testimony of anything that went on at the meetings which could justify his opinion. He did not identify or describe the literature. We do not know what conversations he was talking about, but whatever they were constituted rank hearsay.

Nor could the opinion evidence be received as expert testimony. The subject (purpose of an organization) was not "beyond the ken of the average laymen" and hence was not a proper matter for expert testimony. McCormick, *Evidence*, § 13; *Jenkins* v. *United States*, 307 F. 2d 637, 643. Nor did the witnesses qualify as experts on the subject. And finally, the opinion testimony was inadmissible because it was on one of the ultimate issues in the case. *United States* v. *Spaulding*, 293 U.S. 498, 506; *Simmons* v. *United States*, 206 F. 2d 427, 429-30; *Wesson* v. *United States*, 164 F. 2d 50.

Thus the Board condemned the American Committee on the basis of the bare, unsubstantiated opinion of professional informers who had no opportunity to observe the operation of the organization concerning which they gave their opinion. And if opinions do count, only bias could explain the Board's eager acceptance of the Attorney General's dubious witnesses, while giving no weight at all to the opinions of Prof.

Louise Pettibone Smith (Tr. 4121-30, 4136), Prof. Anton J. Carlson (Tr. 4419-20, 4423-25), attorney Horace S. Meldahl (Tr. 4726-29), Prof. Harvey K. McArthur (Tr. 5545-46), Rev. Charles A. Hill (Tr. 5800-01), and Bishop Arthur W. Moulton (Tr. 7019-21), all of whom testified, with more knowledge than the Attorney General's witnesses, that the American Committee conforms to and carries out the purposes, expressed in its constitution (R. 41), to defend the interests of the foreign born regardless of race, color, nationality, creed, or place of birth.

The court below ignored the Board's reliance on incompetent opinion testimony, although the subject was briefed.

4. Hearsay.

In determining the "purpose" of the American Committee, the Board found (R. 38) that "the Communist Party took the initiative in the formation and organization of "the Northwest Committee for Protection of Foreign Born "in order to have an organization to defend the Party people subject to deportation and to win the support of the foreign born to Party programs and aims."

As the Board's Report shows (R. 37), the finding derives from testimony of Harper and Hartle (R. 67). This testimony, given in 1955, was that in 1948 and 1949, at committee meetings of the Communist Party in Seattle, Henry Huff, a local Party official, and others spoke of the need for having a local branch of the American Committee in order to defend Communist Party members threatened with deportation and to attract support of the Communist Party line from those interested in the problems of the foreign born (Hartle, R. 127-28; Harper, R. 142-43).

The testimony was obviously incompetent, being hearsay of what Henry Huff and others had said seven years before.

Of similar nature was testimony of Mary Markward, which the Board held (R. 41) to be "further evidence relevant to the real purpose" of the American Committee. As described by the Board (*ibid.*), this testimony had three parts. (1) Markward first learned about the American Committee by reading about it in the Communist Party press. We submit that Markward's reading experiences have no bearing any more than that Abner Green first learned of the American Committee by reading about it in the New York Post (Tr. 4804). (2) In 1946, at Communist Party meetings in the Maryland-District of Columbia area, Markward heard the American Committee discussed as an organization that from time to time assisted Party members. This testimony was both hearsay and irrelevant. (3) In 1948, Dorothy Strange, described by the Board as "a Party functionary,"[31] told Markward that she was working for the American Committee and that this work "was just as important to the cause of the Communist Party and was helping the Communist Party just as much as any work anybody was doing as even a functionary of the Party." We doubt that any other American tribunal would have relied on such grotesque evidence—hearsay testimony of another's abstract and ambiguous opinion.

Those who are familiar with the unique rules of evidence applied by the Board will recognize its acceptance of the described testimony of Hartle, Harper

[31] There is no evidentiary basis for the Board's insinuation that Strange was a Communist Party functionary while working for the American Committee (*infra*, p. 91).

and Markward as instances of a Board-devised exception to the hearsay rule. This exception is that a witness may testify to what a non-witness said if the former says that the latter was a Communist. The exception is not recognized by Wigmore and has no theoretical foundation. Moreover, the exception obviously imposes an unfair and unsurmountable obstacle to the defense of accused organizations. For the hearsay is of a kind which is virtually impossible to rebut, since the organization obviously cannot get the Communist non-witness to testify on what he did or did not say some years ago at a Party meeting or elsewhere.

The court below did not notice our objections to the Board's reliance on hearsay.

5. Praise from the Communist Party.

Another basis for the Board's conclusion that the American Committee has a "purpose" which satisfies the aid component was a passage from a 1951 report to a Communist Party convention. The report stated that "the Committee for the Protection of the Foreign Born, led by the devoted and indefatigable Abner Green, performs invaluable service in the fight against the government's deportation drive," and, "It is the duty of all progressives to appreciate the need of these organizations [i.e., the American Committee and the Civil Rights Congress, which also had the misfortune of being lauded], help raise funds and support their work." According to the Board, this reference to the American Committee tended to corroborate the (incompetent) testimony of Lautner and indicated that the American Committee "is the organization used by the Party to carry out Party objectives regarding de-

portees and the foreign born." (R. 40.) The court below was also impressed by the passage (R. 76-77), but again departed from the Board by relying on it as evidence of the control component rather than the aid component (see R. 75).

As the American Committee has consistently and publicly stated, it has defended, among others, aliens accused in deportation and denaturalization cases of past or present Communist Party membership (*supra*, p. 10). It is not strange, therefore, that the Communist Party should praise the American Committee. But to attribute a sinister purpose to an organization because it is praised by the Communist Party is simply pernicious nonsense, not to mention that in this case the evidence of the praise was, by normal technical standards, inadmissible as hearsay.

Furthermore, if the American Committee is to be discredited by praise from the Communist Party, then it should be credited where the praise comes from non-Communist. The Board conceded (R. 62) that the American Committee has been endorsed by "prominent people" (see also *supra*, p. 13). Wendell Willkie wrote to Abner Green (R. Ex. 208): "Incidentally, I think you are doing a great job. That kind of work is an indispensable work in America." Franklin D. Roosevelt said (R. Ex. 135) that the American Committee "has undertaken the task of assuring fair play to the foreign born within the United States. Every American wishes it success." Why should the praise of Communists be so devastating and the praise of Republicans and Democrats so ineffectual?

6. Non-deviation.

a. *Misuse of non-deviation as a test of the aid component.*

Section 13(f) of the Act provides that in determining whether an organization is a Communist-front organization, the Board shall take into consideration certain criteria, including "(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of" the Communist Party. The Board held that the American Committee has not deviated from the views and policies of the Communist Party. It employed this finding to support its conclusion that the American Committee's "purpose" is to aid and support the Communist Party. (R. 53, 65.)

This Court viewed the comparable non-deviation test in section 13(e)(2) of the Act (for Communist-action organizations) as relevant only to "the issue of Soviet domination of the Party"—i.e., to the control component of section 3(3). *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 61. The Board's reliance on non-deviation as a test of the aid component of section 3(4) was, therefore, an error of law, which in itself requires a reversal.

The treatment of this error by the court below again illustrates the deficiency of the review afforded this case. We briefed the point below (Br. for Pet., p. 32). The government did not claim that we were mistaken in our factual premise that the Board had relied on non-deviation solely to support its finding on the aid component. Instead the government contended (Br. for Resp. pp. 23-24) that the Board was right in doing

so, arguing, we think erroneously, that non-deviation is relevant to both the control and aid components.[32]

Nevertheless, the court below did not consider whether or not the Board erred in so applying the non-deviation test. Instead, manifesting no awareness of the plain facts and the understanding of both sides, the court affirmed the Board's non-deviation finding as part of its holding that the evidence was sufficient to establish the control component (R. 77, and see R. 75). Thus the court not only ignored the Board's error, but committed error of its own by affirming the Board's order on a theory which the Board had not employed.

b. *The evidence of non-deviation.*

Since the Board, though wrongly, relied on non-deviation to support its conclusory finding on the aid component, we will examine the Board's evidentiary findings on that subject at this point of our brief. Such an examination discloses that the conclusory finding is not supported by the evidentiary findings, and that the Board misapplied the non-deviation test in ways other than that already mentioned.

(i) *Eisler.* The first ground for the Board's non-deviation finding is that both the American Committee and the Communist Party criticized the government's refusal to allow Gerhart Eisler to leave the country (R. 44). We have already seen (*supra*, pp. 62-64) that the American Committee's position was fully in accord with its general purpose to obtain fair treatment for aliens.

(ii) *The Smith Act.* The Board found that the American Committee and the Communist Party took

[32] The government did not explain why, in that event, the Board did not also rely on non-deviation to support its control conclusion.

similar positions on the Smith Act. This finding has three prongs, of which the first is that, "Like the Communist Party [the American Committee] has taken and advanced the position for repeal of the Smith Act" (R. 44).

The Smith Act is the Alien Registration Act of 1940, 54 Stat. 670 (see Tr. 5922-23). Section 2, added by a floor amendment, is a penal provision dealing with advocacy of the violent overthrow of the government. This "sedition section" has itself become commonly known as "the Smith Act" and has been employed to prosecute Communists. See *Dennis* v. *United States*, 341 U.S. 494; *Yates* v. *United States*, 354 U.S. 298; *Scales* v. *United States*, 367 U.S. 203; *Noto* v. *United States*, 367 U.S. 290. The great bulk of the whole Smith Act (the Alien Registration Act), however, deals with the registering, fingerprinting, reporting and deportation of aliens.

Abner Green testified, without contradiction, that the American Committee compaigned against enactment and then for repeal of the anti-alien provisions of the Alien Registration Act, and that the American Committee did not campaign against the adoption or for the repeal of the sedition section (Tr. 5922-24). The Communist Party's denunciation of "the Smith Act" related only to the sedition section and the prosecutions thereunder; the Party showed no awareness of the anti-alien provisions of the statute (see R. 44-45). Obviously, therefore, the American Committee in this respect deviated from the Communist Party.

The second prong of the Board's finding of non-deviation with respect to the Smith Act is an article which Abner Green wrote for a newspaper not published by

the American Committee. The article (A.G. Ex. 169) criticised the then recently decided cases of *Harisiades* v. *Shaughnessy*, 342 U.S. 580, sustaining the validity of deportations under the Alien Registration Act for membership in the Communist Party which had terminated before enactment of that act, and *Carlson* v. *Landon*, 342 U.S. 524, sustaining the authority of the Attorney General to hold aliens in custody without bail pending hearings on charges that they were deportable for Communist Party membership. Both cases had been sponsored by the American Committee as tests of the applicable statutory provisions. Green's article described the decisions as examples of a prevailing pattern of "un-American reaction," and said that the jailing of Communists under the Smith Act's sedition provision "creates an atmosphere which makes possible still greater incursions on the liberties of all sections of the people."

The Board seemed to think it particularly significant that an anti-Smith Act statement issued by the National Committee of the Communist Party in October 1951 said, "The court of last appeal is the American people," and Green's article (published April 9, 1952), said, "But the court of last resort, the people itself, is still to be heard from" (R. 44-45).

Thirdly, the Board found (R. 45), that the American Committee's "opposition to the Smith Act has not been limited to the 'anti-alien' provisions." It cited the following evidence. (1) At one of its national conferences the American Committee adopted a resolution "urging support of an organization named Civil Rights Congress in defense of the Communist Party officials indicted for violation of the conspiracy provisions of the Smith Act" (R. 45). (2) American

Committee statements urging repeal of the Smith Act did not always specify that they were limited to the alien provisions of that statute (R. 45). (3) A 47-page booklet attacking the Immigration and Nationality Act, authored by Abner Green and published by the American Committee (R. Ex. 191), contained a sentence, "The Smith Act prosecutions and jailings of Communist Party leaders bolster the McCarthys and Veldes" (R. 46).

By any rational standards, the trivia cited by the Board do not demonstrate a significant similarity between the Communist Party's offensive against the sedition section of the Smith Act and the American Committee's opposition to the anti-alien provisions of that legislation plus Green's scattered asides against the sedition section.

(iii) *More asides.* From the same 47-page booklet written by Abner Green (R. Ex. 191), the Board culled three more sentences on current events considered by Green to illustrate how anti-Communist hysteria created an atmosphere detrimental to both the foreign born and the native born (R. 46-48). One sentence mentioned "the rotten frame-up of the Rosenbergs" (R. 46), another the Taft-Hartley Law, and a third the "vicious Jim Crow system" (R. 47). The Board found that the last sentence "is part of the evidence indicating that [the American Committee] has followed the Communist Party line in seeking to influence and win over the Negro people" (R. 48). The other evidence of which this was "part" was evidence of the Party's line, not of the American Committee's line (R. 48).

(iv) *Criticism of the government.* The Board also found evidence of non-deviation in the fact that the

American Committee criticized the government in a handful of passages selected from the huge volume of American Committee literature (R. 50-53). Among the things considered significant by the Board were that Communist Party literature has at times used the terms "reaction," "reactionary forces," "ruling class" and "American imperialism" (R. 48), and Abner Green used the terms "camp of native reaction," "reactionary elements" and "fascist propagandists" in a speech to the American Committee's 1945 Annual Conference (R. 50),[23] and the phrases "reaction in the United States" and "American reaction" in a Committee booklet (R. 51). The Board also claimed that "defense of the Communist Party" was woven into two American Committee booklets dealing with the government's political deportation drive and written by Green (R. 51; see also R. 59). The booklets themselves (P. Ex. 56, 166) belie the claim, as do even the excerpts quoted by the Board out of context (R. 51-53, 59). All these show is that Green did not share the Board's anti-Communist animus.

The Board's emphasis on the American Committee's criticism of the government was also one-sided. The Board failed to note that the American Committee had had high praise for the administration of the

[23] The Board asserted (R. 50) that Green applied this terminology to "American leadership." This is untrue. Green's speech applied the terms to unidentified reactionary and fascist elements in the United States (P. Ex. 259, pp. 11-12). It is the Board, not Green, that identified these groups with "American leadership." It is interesting that the Board did not mention a speech, very similar to Green's, made by Congressman Emanuel Celler to the same conference (P. Ex. 259, pp. 5-6). Mr. Celler's speech, entitled "Forces Subversive to American Democracy," criticized reactionary groups in American life and used such terms as "Hitlerite jackals," "evils of fascism and Nazism," "white supremacy," and "fascist slavery."

Immigration and Naturalization Service under Commissioner Earl Harrison, whose policies and actions it considered fair and humane (see, e.g., R. Ex. 246).[34]

(v) *Defense of Communist aliens.* Finally, the Board rested its finding of non-deviation on the fact that the American Committee has defended Communists, as well as non-Communists, in deportation proceedings, criticized the Department of Justice's Communist deportation drive, and called for a repeal of the Communist deportation laws (R. 58-60). Thus the Board, having begun with the proposition that the defense of Communist aliens in deportation proceedings is not subversive unless done with the motive of aiding the Communist Party (*supra*, p. 28), ended by inferring that motive from the fact of defending Communist aliens.

The evidence of non-deviation consists, therefore, of the fact that the American Committee opposes the deportation of Communists, as well as of all other resident aliens, and the Communist Party, naturally enough, also opposes the deportation of Communists. Everything else consists of a few trivalities and irrelevancies (like Abner Green's rhetorical style and asides against the Smith Act's sedition section), combed and distorted from the great mass of American Committee literature issued over a twenty-year period.

Nothing in this record remotely resembles the evidence of non-deviation which was found significant

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[34] Mr. Harrison returned the compliment. In 1943, in accepting an award at a dinner given by the American Committee in his honor, he said of the American Committee: "In my experience with you, I have found you appreciative of the problems and responsibilties of the government, as well as your duty toward those you wish to assist. We are grateful for your interest." R. Ex. 187, pp. 3-4; Tr. 5663-64, 5672.

in the *Communist Party* case. Here there was no "coincidence of policies extended over a vast area of subject matter . . . absolutely invariant during more than thirty years . . . unbroken even in the face of sharp reversals in the Soviet's views." *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 60-61.

The Board's finding is contrary to the intent of the framers of the Act, who recognized that agreement with the Communist Party on a handful of issues does not satisfy the non-deviation standard. On the floor of the Senate, Senator Graham expressed the fear that under that standard an organization might be condemned under the Act because its views on the Truman Doctrine and the Marshall Plan were the same as those of the Communist Party. Senator Mundt, one of the two principal originators of the Act, replied: ". . . no court could find that there was no deviation between an organization which shared the Communist view point on only two questions and the Communist Party, which has viewpoints on many other issues and matters . . . ." Senator Graham persisted: "But suppose the organization by its charter could take a position on only those two matters." Senator Mundt replied: "Then by its silence it would deviate from the Communist Party in regard to all of the rest of the issues on which the Communist Party takes a stand. It would not be found Communist by a preponderance of the evidence." 96 Cong. Rec. 14532.

7. The Reservoir Conclusion.

In its Concluding Findings, the Board held (R. 65) that the purposes of the American Committee have been to fight to prevent the deportation of members and officers of the Communist Party, "and secondarily,

to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party."

We are able to identify only three passages in the preceding text of the Report which seem in any way germaine to the Board's conclusion of the "secondary" purpose.

In the first of these passages, the Board found (R. 36) that the Communist Party's policy toward the foreign born is (1) to seek to prevent the denaturalization and deportation of Party officers and members and (2) "to win the goodwill of the foreign born and obtain from them adherents to and support for the Party and for Party programs." That such would be Communist Party policy is self-evident, but it does not follow that the American Committee has the same policy.

In the second passage, the Board found (R. 38) that the Communist Party took the initiative in forming the Northwest Committee for protection of Foreign Born "in order to have an organization to defend Party people subject to deportation and to win the support of the foreign born to Party programs and aims." This again relates to a desire of the Communist Party, not of the American Committee. It is significant that the Board cited no evidence that the Northwest Committee ever in fact carried out the Party's desire "to win the support of the foreign born to Party programs and aims." Moreover, we have already seen that the Board erred in considering the evidence relating to Area Committees (*supra*, pp. 50-57), and that the particular finding under discussion was based on hearsay testimony (*supra*, pp. 69-70).

The third passage is this (R. 57-58):

> "[The Attorney General's] witness Lautner testified that the defense of non-Party members was not incompatible with the operation of [the American Committee] as a Party defense organization, that 'In fact, that would add to the prestige of the organization.' . . . Such defense activities and the approaches used by [the American Committee] . . . are consistent with the purpose of the Communist Party to have an ostensibly non-Party organization to assist Party members involved in deportation, and with the purpose of winning the good will and support of the entire foreign born segment of the population. In the context of this record, the fact that [the American Committee] has defended a number of non-Communists is not persuasive in showing independence from Communist Party control or operation for Party purposes."

This conclusory finding that the American Committee's defense work is not inconsistent with the purpose of winning the good-will of the foreign born does not support the later conclusory finding that the American Committee has the purpose of winning such good will, much less that it has the purpose of winning such good will as a reservoir from which to draw adherents to the Communist Party. There are also other objections to the quoted passage. (1) It misstates Lautner's testimony on the subject. Lautner testified that the defense of non-Party aliens would "add to the prestige of the organization," but he did not say anything about such defense activity being "not incompatible with . . . operation as a Party defense organization" (R. 117). (2) Lautner's testimony was incompetent, being opinion on a matter not properly the subject of opinion testimony and concerning which he had

no special qualifications to testify (see *supra*, pp. 67-68). (3) Lautner's testimony (R. 117) was that the defense of non-Communists would add prestige to the American Committee, not to the Communist Party. (4) All of Lautner's testimony must be disregarded because of the curtailment of his cross-examination (*infra*, pp. 98-102).

In sum, the Report contains no evidentiary findings which can supply a rational basis for the grandiose Concluding Finding that the American Committee has a secondary purpose of creating a reservoir of good will for the Communist Party.

We have now reviewed all the subsidiary findings from which the Board derived its conclusion that the American Committee had the motive ("purpose") of aiding and supporting the Communist Party. We submit that this conclusion is an obvious canard and was not adequately reviewed by the court below.

B. The Conclusion of the Board on the Control Component and the Affirmance Thereof by the Court Below Otherwise Rest on Irrelevant and Incompetent Evidence and Misapplication of the Act

For reasons already explored, the Board's conclusion on the control component is vitiated by the fact that it, as well as the finding on the aid component, derives in large part from the irrelevant evidence concerning Area Committees. We have also seen that the Board's non-deviation finding is untenable, so that the control conclusion also falls if it is based, as the court below apparently thought, on the non-deviation finding.

In what follows we examine the remaining bases for the Board's control conclusion and its affirmance by the court below.

1. Misapplication of Section 13(f)(1).

Section 13(f)(1) of the Act provides that in determining whether an organization is a Communist-front, the Board shall take into consideration the extent to which persons active in the management, direction or supervision of the organization are active in the management, direction or supervision of, or as representatives of, the Communist Party.

In applying 13(f)(1) (R. 28-35), the Board found (R. 35) that "the entire organization (national and locals) is effectively under the management, direction and supervision and controlled by members and representatives of the Communist Party." Since this finding coalesces the American Committee and the Area Committees, it is, for reasons already canvassed, on that ground alone erroneous.

Applying section 13(f)(1) to the American Committee itself, the Board found that the organization is "managed, directed and supervised by Abner Green and Harriet Barron;" that both Green and Barron were members of the Communist Party at the time of the administrative hearing, and that Green "has served as a representative of the Communist Party in operating" the American Committee. The Board also found that from 1948 to 1952, the American Committee's naturalization aid director was "Communist Party member Dorothy Strange." (R. 31.) As we later show, the findings of Party membership and representation are erroneous. But even if the findings were sound, they do not represent a proper application of section 13(f)(1).

The key issue under 13(f)(1) is whether persons active in the management of the accused organization

are *at the time of the administrative hearing* active *as representatives of the Communist Party.*[35] The section does not apply merely because managers of the accused organization are members of the Communist Party, in the absence of evidence and findings that they are also Party representatives in the organization. *National Council* v. *S.A.C.B.*, 322 F. 2d 375, 384-85. Nor does the section apply if the managers of the accused organization were once Party representatives. They must be such representatives in the present—i.e., at the time of the administrative hearing.

As we have seen, the Board found (R. 31) that Green "*has served* as a representative of the Communist Party in operating [the American Committee]." But it made no such finding in the present tense or as of the time of the hearing. This was not simply a language oversight. For on the same page of the Report, the Board was at pains to find expressly that Green and Barron were members of the Communist Party at the time of the hearing, as well as previously. Moreover, the Board's finding as to Green's representative capacity derived from "the fact that Green became the top leader of [the American Committee] at the direction of the Communist Party" (R. 31).[36]

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[35] The section includes not only Party representatives, but also persons active in the management, direction or supervision of the Communist Party. Since, as the court below pointed out (R. 75-76), there was no claim or finding that Green or Barron had any managing, directing or supervising role in the Communist Party, we shall, for purposes of simplicity, limit our discussion to Party representatives.

[36] The Board asserted that its finding derives not only from this "fact" but also "from other evidence of record" (R. 31). The "other evidence" is not identified either in the Report proper or in the annotated version submitted by the government to the court below (see *supra*, p. 59, ftn. 27). The assertion that there is such "other evidence" is unfounded.

This supposed direction of the Communist Party occurred in late 1941 or early 1942 (R. 29-30). Obviously, even the Board realized that evidence that Green became executive secretary in 1941 by direction of the Communist Party could not establish that he was the Party's representative nineteen years later. Hence the Board resorted to the weasel-worded finding, "has served as a representative."

As to Barron and Strange, the Board does not find that they were ever representatives of the Communist Party.

There being no subsidiary finding that any person active in the American Committee's management was a representative of the Communist Party at or even near the time of the administrative hearing, there is nothing to support the Board's application of section 13(f)(1) adversely to the American Committee. The Board's conclusion to the contrary derives from three errors of law (in addition to the error of reliance on evidence concerning Area Committees). (1) The Board held the section, which is concerned with a present status, satisfied by evidence of an episode in the remote past. (2) It held the section, concerned with the presence of Party representatives as distinguished from Party members, satisfied in part by subsidiary findings that Barron and Strange were members of the Party. (3) The finding as to Strange was also an irrelevant basis for applying section 13(f)(1) because there was no finding or evidence that Strange was a manager of the American Committee; to the contrary, the Board found (R. 31) that the organization is "managed, directed and supervised" by only two persons, Green and Barron.

We now turn to the errors in the subsidiary findings.

2. The Evidentiary Findings as to Green.

As already seen, the Board found that Abner Green was a member of the Communist Party at the time of the hearing and had served (at an unspecified time) as a representative of the Party. These findings rest on testimony of John Lautner, an item in the *Daily Worker*, an item in *Political Affairs*, and testimony of Barbara Hartle.

(a) The Board credited testimony by Lautner that Green attended Communist Party meetings, the latest of which was the Party's 1948 national convention, and that Lautner saw Green in the Communist Party building on numerous occasions after 1948 (but necessarily prior to January 17, 1950, when Lautner was severed from the Party). (R. 28, 31, 96.) What happened on any of these occasions does not appear.

The Board also credited testimony by Lautner that early in 1942, he and one Landy, acting as Communist Party representatives, adjudicated a dispute between Green and Irving Novick, both of whom were then employed by the American Committee. According to Lautner, he and Landy decided that Novick should be removed and Green put in as head of the American Committee, and as a result Green was made the head (R. 29, 31, 104-07). What the dispute was about does not appear. Nor does it appear how the decision was implemented, there being no testimony that the decision was communicated to or known by the then Board of Directors of the American Committee, which selected the organization's executive secretary.

Although one could hardly tell it from the Board's Report, which speaks of Green's "attempted contradiction" (R. 30), Green in fact, as the court below recognized (R. 76), "flatly contradicted" Lautner's

testimony on the adjudication, denying that the alleged episode had taken place (R. 170; Tr. 6477, 6866-67), and testifying that Lautner's testimony on the subject was "completely false" (R. 170). Furthermore, the objective circumstances corroborated Green and were inconsistent with Lautner. For unimpeachable documentary evidence established that Green became executive secretary (the top staff position) of the American Committee in December 1941; he was elected to that post by the American Committee's Board of Directors; and he replaced in that position not Novick, but Curt Swinburne, who had resigned after holding the job for about a year (R. Ex. 127, 126; R. 165-67).

The Board's crediting of the uncorroborated testimony of the paid informer Lautner over the corroborated testimony of Green, its suppression of Lautner's unsavory history (*infra*, p. 101), and its refusal to acknowledge Green's direct contradiction of Lautner, demonstrate bias. In any event, the Board could not rightfully rely on Lautner's testimony because of the erroneous curtailment of his cross-examination (*infra*, pp. 98-102).

But even if Lautner's testimony stands and is credited, it does not support the Board's findings. Attendance at Communist Party meetings does not by itself establish Party membership. *Bridges* v. *United States*, 199 F. 2d 811, 836, rev'd on other grounds, 346 U.S. 209. If the Party picked Green over Novick, it does not follow that Green was thereafter its "representative" in the American Committee, nor would his acceptance of preference offered by the Party prove that he was a Party member. Moreover, the claimed attendance at meetings did not go beyond 1948; the even more ambiguous visits to the Party's

building did not go beyond January 1950; and the claimed adjudication was in 1941 or 1942. All these events thus substantially preceded the administrative proceeding and were far too remote to establish membership in the Communist Party at the decisive time. And, as we have already seen, even the Board could not bring itself to find that Green was a Party representative at the only relevant time, that of the hearing.

(b) The Board also relied (R. 28) on an item in the *Daily Worker* of September 7, 1938, referring to an Abner Green, otherwise unidentified, as a member of the Communist Party (P. Ex. 168). This was hearsay and unconnected and remote evidence. And it was utterly preposterous for the Board to regard as evidence that Green was a member of the Communist Party a reference in *Political Affairs* for February 1951 to the "devoted and indefatigable Abner Green" (R. 29).

(c) The Board's finding that Green was a member of the Communist Party also rested on testimony of Hartle that sometime in the period 1948 to 1950 Henry Huff told a Communist Party committee meeting that he had met with Green when the latter had visited Seattle (R. 30, 131). The testimony was obvious hearsay, as well as being remote and irrelevant.

The Board also relied on Hartle's testimony that in 1953 Green "was present at a luncheon meeting of the defendants in a Smith Act trial" and there talked with Huff, one of the defendants in the trial, "about the work of the American Committee and of the progress . . . of the Northwest Committee for Protection of Foreign Born" (R. 30). We fail to see how this establishes that Green was a member or representative of the Communist Party. Moreover, the Board's

account is loaded. Hartle did not call the luncheon a "meeting," she merely said that Green ate lunch with the Smith Act defendants (Tr. 1597, 1599; R. 131). And the Board suppressed Green's testimony that he happened to be at the lunch only because he had no other opportunity to discuss a deportation case with the defendants' trial attorney, that he discussed his business with the attorney apart from others while walking to a restaurant during the trial's luncheon recess, and that the discussion at the lunch was about the trial, with which the other persons there were completely preoccupied (Tr. 6257-63).

The Board found (R. 30) that Hartle's testimony tended "to corroborate Lautner's testimony that Green became leader of [the American Committee] by decision of the Communist Party and served therein as a representative of the Party." But the Board's own version of Hartle's testimony (R. 30) shows nothing which even remotely supports Lautner's account; and contrary to the Board, Lautner did not, and was in no position to, testify that Green served in the American Committee as a representative of the Communist Party (*supra*, pp. 101, 87).

3. The Evidentiary Findings as to Harriet Barron and Dorothy Strange.

The Board's finding that Mrs. Barron was a member of the Communist Party *at the time of the hearing* rests on Lautner's testimony that he attended Party meetings with her *in the 1930's and 1940's* and that in 1949 she visited him at his office in Party headquarters (R. 31, 109-10). The testimony obviously does not support the finding. Moreover, for reasons later stated, Lautner's testimony should not have been accepted because of the erroneous curtailment of his cross-examination.

The Board implied that Miss Strange was a Communist Party member from 1948 to 1952, when she was naturalization aid director of the American Committee (R. 31).

Markward testified that Strange was a member of the Communist Party in Washington, D. C. prior to 1948, at which time she left Washington and went to New York to work for the American Committee (Tr. 3161-64, 3196). There is, however, no evidence that Strange was a member of the Communist Party after she left New York. Moreover, the Board suppressed Green's uncontradicted testimony that in 1948 Strange approached him and Miss Barron at an American Committee conference in Washington; that he and Barron had never seen her before; that she asked for a job with the American Committee, saying that she could not get work in Washington because she was a Negro; that when a vacancy arose soon after, the American Committee hired her, at first on a three-month trial basis and as a receptionist; and that he and Mrs. Barron had never asked her if she was a Communist (Tr. 6081-86).

4. The Board's Misapplication of Section 13(f)(2).

The last basis for the Board's conclusion on the control component was its finding under section 13(f)(2) of the Act that the Communist Party has given the American Committee substantial aid and support (R. 64, 66, 60).

The evidentiary findings on which this conclusory finding was based indiscriminately commingle instances of claimed pre-Act and post-Act support and of claimed support to Area Committees as well as to the American

Committee (R. 60-64).[37] For these reasons alone the conclusory finding cannot stand.

In addition, the evidence on the subject does not support a finding adverse to the American Committee under section 13(f)(2), nor is the support of a kind and amount to justify any inference of Communist Party control of the American Committee.

As the uncontradicted evidence established, and as the Board itself recognized (R. 61), the American Committee has always sought financial support from the public generally and has accepted donations from any givers (*supra*, p. 12). In April 1951, the Communist Party gave the American Committee an unsolicited check of $2,000 to help finance the legal expense of the American Committee's defense of certain Party leaders facing deportation charges (R. 61; A.G. Ex. 156-C). There is no evidence of any other monetary donation by the Communist Party to the American Committee.[38] The donation was obviously insignificant, in view of the fact that the American Committee's annual income "ran as high as $43,500 and its expenses about that much" (R. 81). And donations to the American Committee by other organizations, including contributions from trade-unions earmarked for use in the defense of union members in-

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[37] The Report found (R. 61) "a consistent pattern of Party support of respondent and aid in respondent's activities." The "pattern" is based on testimony about Area Committees except as to the $2,000 donation and favorable press references hereafter discussed.

[38] The Board's Report also referred to donations of $35.00 and $50.00 to the Los Angeles Committee for Protection of Foreign Born (R. 61, ftn.).

volved in deportation proceedings, was a commonplace (P. Ex. 244, pp. 4-5; Tr. 6237).

The only other support of the American Committee (not including the Area Committees) found by the Board consists of items in the Communist Party press reporting American Committee affairs and activities and making favorable references to the American Committee (R. 63). There is no evidence that the American Committee ever solicited compliments from the Communist Party. Furthermore, as the Board admitted (R. 62), the American Committee has received numerous compliments and extensive support from non-Communist sources, including the Department of Justice.

Since the American Committee steadfastly opposed deportations for Communist Party membership or other political grounds, the Party's commendations were natural and convey no sinister significance.

We submit that favorable press references do not constitute support of an organization within a legitimate reading of 13(f)(2). In any event, the favorable references to the American Committee by the Communist press did not equal, much less overshadow, favorable references to the American Committee by the non-Communist press (R. Ex. 134, 136, 173, 228), nor are they, by any rational standards, indicative of Communist Party control of the American Committee.

5. The Court's Reliance on Improper Considerations.

The foregoing criticisms of the Board's findings and conclusions were raised before the court below, but were not noticed in the court's opinion. Moreover, the opinion demonstrates that the affirmance of the Board's order rests on improper considerations. This

appears from the matters set forth by the court in support of its statement (R. 81) that, "Through all the activities [of the American Committee] runs a prominent thread of Communist interest."

Some of these matters—the American Committee's position respecting Eisler, its defense of deportation cases involving alleged members of the Communist Party, and criticisms of the government—have already been discussed herein and need not be reexamined. The other strands of the court's "thread of Communist interest" are as follows:

(1) The court stated (R. 82):

> "The provisions of the Internal Security Act[39] which were the targets of the Committee's attacks were those which required the deportation of aliens who were or had been members of the Communist Party. The Committee maintained that these provisions were premised on political opinion and threatened the freedom of all American people to their political opinions. This, of course, is Communist doctrine, but so far as this Government is concerned the point was put at rest by the Congressional findings to which we have referred."

(2) The court quoted (R. 82-83) an American Committee statement which criticized three decisions of this Court as "destroying many of the democratic rights accorded non-citizens and jeopardizing, thereby, the liberties of all Americans, native as well as foreign

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[39] The opinion states (R. 81) that the American Committee's "name for the Internal Security Act of 1950" is "the Walter-McCarran Act." In fact, the American Committee, like others knowledgeable in the immigration field, applied the name "Walter-McCarran Act" to the Immigration and Nationality Act of 1952 (see, e.g., R. Ex. 81, 191). The Internal Security Act is, of course, often called the McCarran Act.

born," and which also declared that "the U. S. Supreme Court had deserted its duty to protect the Bill of Rights." The court juxtaposed (R. 83) a quotation from *The Worker* which said very similar things about two of the same three decisions (P. Ex. 230).

The three decisions criticized by the American Committee (see P. Ex. 216) were *Carlson* v. *Landon*, 342 U.S. 524 (Justices Black, Frankfurter, Douglas, Burton dissenting); *Harisiades* v. *Shaughnessy*, 342 U.S. 580 (Justices Black and Douglas dissenting); and *United States* v. *Spector*, 343 U.S. 169 (Justices Frankfurter and Jackson dissenting).[40] The court failed to observe that the dissents in those cases also contained passages similar to the American Committee's statement. In *Carlson*, Justice Black (at 548) described the majority holding as "a shocking disregard of . . . provisions of the Bill of Rights." In *Harisiades*, Justice Douglas commented (at 598), "We repudiate our traditions of tolerance and our articles of faith based upon the Bill of Rights. . . ."

(3) The court stated (R. 82):

> "The Internal Security Act is directed also at Fascists and all sorts of totalitarians. But we do not find in this record evidence that the Committee fought in behalf of Fascist aliens. Indeed it expressed a hearty antagonism to adherents of that thesis."

As the court itself recognized (R. 78, 79), the American Committee defended all persons who sought its help in deportation or denaturalization cases regard-

[40] The court below mistakenly described all three cases as decided in March 1952 (R. 82).

less of their political views (*supra*, pp. 9-10). To the best of our knowledge and belief, the government has never sought to deport an alien on a charge that he was a fascist. During World War II, there was a brief flurry of denaturalization actions instituted against members of the German-American Bund and other Nazi or fascist sympathizers. The record does not show that any of these sought the American Committee's help. The American Committee did take a public position against these denaturalization actions (*supra*, p. 9).

It seems to us that the court's "thread of Communist interest" evinces not that the American Committee is controlled by the Communist Party, but that the court's review was affected by the court's own political views, including a baffling conception of "Communist doctrine."

6. The Absence of Meaningful Evidence of Control.

In *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 39-40 (emphasis supplied), the Court defined subjection to control for the purposes of the Act as being "a disposition unerringly to follow the *dictates* [of the controller], not by the exercise of independent judgment on the extrinsic appeal that those *dictates* carry, but for the reason that they emanate from that [controller]." The Board cited no instance in which the American Committee received dictates from the Communist Party or adopted programs or policies for reasons other than those arising from its own independent judgment. Thus meaningful evidence of control is lacking. And since neither the Board nor the court paid any attention to this fact, while relying on a hodgepodge of palpably irrelevant matters, they

obviously failed to apply a correct construction of the control component.

Moreover, the undisputed evidence as to the structure and operations of the American Committee negatives the existence of outside control. The organization's governing body, which elects its officers and defines its policies, is the Annual Conference. And anybody, without exception, may participate in the Conference and have full voting rights therein merely by attending and paying a registration fee of $2.00. (See *supra*, p. 6.)

Of course Abner Green conducted the day-to-day operations of the American Committee. But there is not the slightest evidence that in doing so he ever departed from policies established by the open, uncontrolled Conferences. Nor were the implementations of Conference policy concealed from the Conference or the public. On the contrary, the Board's evidence of American Committee activities and policies comes for the most part from American Committee publications, including those authored by Green.

Similarly, the uncontradicted evidence establishes that anybody who chooses to do so can participate in the work of the American Committee, and that no political conditions on such participation are imposed (Tr. 4141, 5099, 5103, 5120). Finally, the uncontradicted evidence establishes that Communist doctrine was never discussed or promoted at American Committee meetings and affairs (Tr. 4614, 4712-16, 4940-44, 5801).

C. Reliance on the Testimony of Lautner Was Erroneous Because of the Curtailment of His Cross-Examination

John Lautner, a former Communist Party functionary turned professional witness for the Department of Justice (R. 96-101; Tr. 1795-06, 1801-06), was the most important of the Attorney General's witnesses. He testified to the connections between the Communist Party and the American Committee itself, as distinguished from Area Committees, concerning which other ex-Communists testified. Lautner was the source for the most damaging findings relating to the control component, and the Board also relied on his testimony to support its conclusion on the aid component.

On the basis of Lautner's testimony, the Board made findings, on all of which the court below heavily relied:[41] (1) that Abner Green, the executive secretary and leading figure of the American Committee, was a member of the Communist Party, served as a Party representative in the American Committee, and had obtained his American Committee post by a decision of the Party (R. 28-31, 75-76); (2) that Harriet Barron, administrative secretary of the American Committee, was a member of the Communist Party (R. 31, 75); and (3) that Green and Barron "had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to the American Committee, and 'fitted' Party policies into the functions of the American Committee" (R. 40, 76). The Board also relied on testimony by Lautner that the American Committee functioned to

[41] In each item of the enumeration that follows, the first record citation is to the Board's Report, the second to the opinion of the court below.

give legal aid to members of the Communist Party (R. 39), and that the American Committee's defense of non-Communists was not incompatible with its operation as a Party defense organization but would add to the organization's prestige (R. 57).

The reliance on Lautner's testimony was erroneous because of curtailment of his cross-examination.[42]

On cross-examination, counsel for the American Committee asked Lautner, "Where do you live?" Lautner refused to answer the question; the hearing examiner refused to order him to answer; the question went unanswered; the examiner refused to strike his testimony; and the Board sustained the examiner's rulings. (R. 113-115, 28 ftn.)

The rulings were a flagrant denial of the right of cross-examination and require reversal. *Alford* v. *United States*, 282 U.S. 687, squarely so held as to the exclusion of the identical question when addressed to an important witness. As *Alford* pointed out (at 692), "Prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them." And (at 693), "The question 'Where do you live?' was not only an appropriate preliminary to the cross-examination of the witness, but on its face, without any such declaration of purpose as was made by counsel here, was an essential step in identifying the witness with his environment, to which cross-examination may always be directed."

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[42] We have previously seen other grounds on which Lautner's testimony was incompetent or irrelevant (*supra*, pp. 64-68, 82-83, 87-91).

The hearing examiner was therefore obviously wrong in ruling, as he did, that the inquiry as to the witness' residence was not material (R. 114). Understandably, the Board in its Report advanced another justification, saying (R. 28, ftn.) that "the cross-examination shows that [the American Committee's] counsel was adequately informed as to Lautner's background, environment and activities." Counsel knew, of course, that Lautner was a professional government informer. But counsel did not know—nor did the Board cite any possible source from which counsel could know—where Lautner resided and what were his activities and reputation in or about his residence. The Board's ruling comes down, therefore, to an unsubstantiated position that the withholding of the witness' address was not prejudicial. But the plain holding of *Alford* is that the withholding of a witness' residence address is ipso facto prejudicial and a denial of a fair hearing. As *Alford* stated (at 692), "To say that prejudice can be established only by showing that the cross-examination, if pursued, would necessarily have brought out facts tending to discredit the testimony in chief, is to deny a substantial right and withdraw one of the safeguards essential to a fair trial."

Moreover, this case is more aggravated than *Alford*. For though Lautner claimed that he feared for his personal safety if he disclosed his residence (R. 113), the examiner excluded questioning by the American Committee's counsel designed to expose the claim as insincere and preposterous (Tr. 1083-84, 1087-93).[48]

[48] Objections were sustained to the following questions: "As a matter of fact, the reason that you gave for refusing to answer my question is a complete invention which you have made up to glamorize and dramatize yourself, isn't that true?" (R. 115.) "You know, don't you, that Mr. [Louis] Budenz gives his home

Nevertheless, the opinion below does not mention the curtailment of Lautner's cross-examination, although the point was briefed.

Experience has shown that in Board cases, and for that matter in "anti-Communist" cases generally, the government has produced witnesses of the most dubious reliability. Cf. *Communist Party* v. *S.A.C.B.*, 351 U.S. 115; *Mesarosh* v. *United States*, 352 U.S. 1. Lautner himself was a turncoat who, at the time of the hearing and for some years before, derived his income solely from his employment by the Department of Justice as a witness and "consultant" on Communism (Tr. 1795-96, 1801-06). He had an unsavory personal history (Tr. 1824-31), which included, as he admitted, the giving of perjured testimony in a civil suit (Tr. 1827-28). The Board should not be permitted to protect such professional witnesses from cross-examination which must be permitted of all other witnesses. And it would have been more seemly, and more in accordance with its obligation of judicial review, if the court below had at least noticed the point raised concerning the curtailment of Lautner's cross-examination and distinguished *Alford* if it thought that a distinction existed.

The Board's error cannot be rectified at this late date by remanding the case to the Board to permit the questioning which was excluded. Lautner testified in June

address when he is asked that in proceedings?" (Tr. 1088.) "Let me put it this way: Do you know any other anti-Communist witness besides yourself who refuses to give his home address in appearances on the stand?" (Tr. 1088.) "Now, I ask you, is it not a fact that of the hundreds of witnesses who in recent years have been what I think we can call anti-Communist witnesses, and who have been viciously attacked by the Communist Party in turn, is it not a fact that you are the only one who puts on this act of refusing to give your address on some grounds of personal safety?" (Tr. 1092.)

1955 (R. 95, 112). In the intervening years, the neighborhood in which he then resided—and in which he may no longer reside—has inevitably changed; other residents must have come and gone; Lautner's relationships with his neighbors must have changed. It is futile to seek to recreate now what was Lautner's environment and reputation then. Moreover, the Board has already committed itself to believing Lautner, and the hearing examiner who observed his demeanor is dead, as is Abner Green, the witness who contradicted Lautner. The only practicable relief, therefore, is to require that Lautner's testimony be stricken, in which event the Board's order is obviously without an evidentiary foundation.

IV. THE PROVISIONS OF THE ACT RELATING TO THE REGISTRATION OF COMMUNIST-FRONT ORGANIZATIONS ARE UNCONSTITUTIONAL ON THEIR FACE AND AS APPLIED.[44]

A. The Act and the Board's Order Violate the First Amendment Because They Restrain Rights of Association, Speech, Press and Petition Without Justification

1. The Clear and Present Danger Test Applies and is not Satisfied.

The Board's order requires the American Committee to register (and defame) itself as a subversive organization under section 7(b) of the Act and to submit for public inspection (sec. 9) the information concerning its internal affairs and personnel required by section 7(c).[45] These "disclosure" requirements, even without the accompanying sanctions on the organization

[44] We have already briefed (*supra*, pp. 53-56) our contention that the Board applied the Act unconstitutionally by holding the American Committee liable for conduct found against the Area Committees.

[45] The information required by section 7(c) includes a listing of the sources of all income. Accordingly, the organization must supply the names of all its contributors and dues-paying members.

and its members (*supra*, p. 5), at the very least discourage persons from belonging to, supporting, meeting with and working with the organization. Thus they adversely affect the interest in organizational association which is protected by the First Amendment. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Bates* v. *Little Rock*, 361 U.S. 516; *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 90-91.

In addition, the Act and the Board's order curtail rights of free speech and press and the right to petition the government for redress of grievances. The American Committee publishes and distributes literature and agitates for reforms in the laws and the administration of the laws. These activities are, of course, protected by the First Amendment. So too is the American Committee's sponsorship of litigation affecting the interests of the foreign born. Cf. *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 428-30; *Brotherhood of Railroad Trainmen* v. *Virginia*, 377 U.S. 1. The Board's order conditions the continued exercise of these First Amendment rights on compliance with the Act's registration requirements. Moreover, it was precisely the exercise of these rights which was the foundation for the Board's order. Accordingly, the Board's order imposes a restraint which must conform to First Amendment limitations. *Thomas* v. *Collins*, 323 U.S. 516; *Communist Party* v. *S.A.C.B.*, *supra*, at 89.

In *Communist Party* v. *S.A.C.B.*, *supra*, the Court sustained a registration order issued under the Act against the Communist Party on a finding that it is a Communist-action organization. The Court considered the order to be an indirect or incidental restraint, rather than a direct prohibition, of the exercise of First

Amendment rights (at 90, 97). It therefore applied the balancing test and held that the First Amendment interests of the Party and its members were outweighed by the governmental interest in protecting the national security against the supposed menace of Communist objectives and methods (at 90-105).

Presumably, if the Court had thought that the registration order against the Communist Party constituted a direct, rather than incidental, restraint of First Amendment rights, it would have applied the clear and present danger test, as it did to a milder registration requirement in *Thomas* v. *Collins, supra,* at 530. And see *American Communications Assoc.* v. *Douds,* 339 U.S. 382, 396, 399; *Dennis* v. *United States,* 341 U.S. 494.

Whatever the case may be as regards the Communist Party, the order here is realistically a direct prohibition of association. The Act's provisions are far more severe than the disclosure requirements which failed the balancing test in *N.A.A.C.P.* v. *Alabama, supra,* and *Bates* v. *Little Rock, supra.* A registration order under the Act is an expression of governmental condemnation of the organization to which it is addressed and is accompanied by intolerable governmental sanctions against the organization and its members. It is conceivable that an organization committed to seeking fundamental change in the structure and control of our political system may survive the destructive effects of a registration order, since revolutionists must anticipate and be willing to meet their attempted suppression by the government they would supplant. But a cause organization like the American Committee intends to, and can, function only within the existing political structure. It cannot survive in the semi-legal

status of an organization ordered to register as a Communist front. Accordingly, a registration order against such an organization inevitably destroys the organization and thereby "directly" restrains association in it.

Moreover, whatever the situation may be as to the right of association, the registration order clearly imposes a direct restraint on the American Committee's exercise of the rights of speech, press and petition. In the *Communist Party* case, the Court held the contrary as to the Party, distinguishing *Thomas* v. *Collins, supra,* on the grounds that the "present statute does not, of course, attach the registration requirement to the incident of speech, but to the incidents of foreign domination and of operation to advance the objectives of the world Communist movement" (at 90). But here there was no evidence or finding of foreign domination of the American Committee, and the "operation" which evoked the registration order consisted of the organization's First Amendment activities in seeking changes in the laws and in defending aliens.[46]

Accordingly, the Board's order here should be judged by the clear and present danger test. This test is obviously not met. There was neither finding nor evidence of any dangerous advocacy or activity, and indeed it would be ludicrous to visualize any danger in the concededly "laudable" endeavors of the American Committee.

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[46] Whatever may be the rule with regard to foreign agents, it is impossible to see how the identity of an organization's domestic controllers lends any more justification for a restraint of First Amendment rights than the identity of an individual speaker or writer.

2. If the Balancing Test Applies, It is not Satisfied.

The Act and the Board's order also fail the balancing test, if that is applicable. That test requires that the restraint on First Amendment interests be outweighed by a "compelling" governmental interest. *N.A.A.C.P.* v. *Alabama, supra,* at 463; *Bates* v. *Little Rock, supra,* at 524. It also requires a "substantial connection between the breadth of disclosure demanded and the purpose which disclosure was asserted to serve." *Communist Party* v. *S.A.C.B., supra,* at 93.

The *Communist Party* case held that the First Amendment interests of the Party and its members were outbalanced by "the exigencies of self-preservation and the values of liberty" (at 96), which required protection of the national security against what Congress could reasonably consider a dangerous, foreign-controlled conspiracy, seeking by illicit means to overthrow the government and substitute a totalitarian dictatorship under foreign domination (at 93-95). The Court expressly disclaimed, however, any possibility that the Act's registration requirements could constitutionally be applied to organizations which do not have such endangering characteristics (*at* 104).

This case obviously comes within the disclaimer. On one side of the balance, the First Amendment interests involved are substantial, and are important not only to the American Committee but also to the entire foreign-born community whose interests it protects. The government has no legitimate interest whatsoever, let alone a "compelling" one, in suppressing the American Committee's peaceful efforts to defend aliens and promote improvements in our immigration laws and policies. And since the American Committee engages in no other kind of activities, it does not infringe "the exigencies

of self-preservation and the values of liberty." To the contrary, those values are promoted by the American Committee.

Nor is there any, much less a substantial, connection between the destructive disclosure requirements which the Board's order visits on the American Committee and the asserted purpose of the Act to protect the nation from an imagined foreign-dominated insurrectionary conspiracy.

No governmental interest is supplied by the fact that a Communist-front organization is, by definition, substantially controlled by a Communist-action organization, meaning the Communist Party. The government lacks power to suppress the peaceable and "laudable" exercise of First Amendment rights by Communists, as well as by everybody else. *DeJonge* v. *Oregon,* 299 U.S. 353. Even statutes addressed to the advocacy of violence must be so limited as not to impair the "legitimate political expression or association" of Communists. *Scales* v. *United States,* 367 U.S. 203, 229. And even the House Committee which reported the bill recognized, as the court below did not, that legislation "cannot and should not be directed" against peaceable Communist activity. *Supra,* pp. 45-46.

It is of no consequence that a Communist-action organization is, by definition, substantially controlled by the Soviet Union. In the first place, that "control," as interpreted by the Court, is no more than a "disposition" to agree with the Soviet Union. *Communist Party* v. *S.A.C.B., supra,* at 39-40. Secondly, who controls the Communist Party is besides the point. For there is neither evidence nor finding that the Soviet Union controls, or even is aware of the existence of, the American Committee.

Nor can the Act's destructive requirements be justified as a measure to disclose to the public the "true nature" of the American Committee. There is no secret as to what the American Committee advocates or whom it defends. The public knows from the organization's literature and stated policies, as did the Board, that the American Committee defends Communist, as well as non-Communist, aliens and opposes political, as well as non-political, deportations and denaturalizations. The Board thought that the crucial issue was the motivation of the American Committee (*supra*, pp. 28-34). But since the First Amendment prevents the government from requiring disclosure of the identity of those who write or distribute handbills (*Talley* v. *California*, 362 U.S. 60), it assuredly prohibits the forced disclosure of the motives or political affiliations of writers and speakers.

B. The Act and the Board's Order Violate the First Amendment and Due Process Because the Control Component, as Construed by the Board and the Court Below, Is Vague

The American Committee has been subjected to onerous requirements not imposed on organizations generally. These requirements, as we have seen, also restrain rights of association, speech, press and petition. If the order which imposes this liability is based on a vague statutory standard, it violates both the First Amendment and due process. *Cramp* v. *Board of Public Instruction*, 368 U.S. 278; *Baggett* v. *Bullitt*, 377 U.S. 360.

By the construction of the Board and the majority below, the aid component of section 3(4), which is the standard for the imposition of registration liability, includes any activity that may benefit the Communist Party, no matter how collaterally or intangibly (*supra*,

pp. 28-37). In both *Cramp* and *Baggett*, the Court held state loyalty oaths invalid for vagueness because they failed to define and circumscribe such terms as "aid to the Communist Party." It follows that section 3(4), as here construed, has the same defect.

Cramp stated (at 286):

> "Those who take this oath must swear, rather, that they have not in the unending past ever knowingly lent their 'aid,' or 'support,' or 'advice,' or 'counsel' or 'influence' to the Communist Party. What do these phrases mean? . . . Could a lawyer who had ever represented the Communist Party or its members swear with either confidence or honesty that he had never knowingly lent his 'counsel' to the Party? Could a journalist who had ever defended the constitutional rights of the Communist Party conscientiously take an oath that he had never lent the Party his 'support'? Indeed, could anyone honestly subscribe to the oath who had ever supported any cause with contemporaneous knowledge that the Communist Party also supported it?
>
> "The very absurdity of these possibilities brings into focus the extraordinary ambiguity of the statutory language."

The "possibilities" that the Court considered absurd in *Cramp*, and which Mr. Justice Clark would have had the Court ignore as "ridiculous" speculations in *Baggett* (at 383), are of the same kind as, and no more far-fetched than, the actuality here—that legal defense of the foreign born has been held to constitute "aid and support" to the Communist Party. Accordingly, section 3(4) as here construed has the "extraordinary ambiguity" which *Cramp* condemns.

C. The Act and the Board's Order Violate Due Process Because the American Committee Was Bound by the Board's Finding, Made in the Proceeding Against the Communist Party, That the Communist Party is a Communist-Action Organization

The American Committee was found to be a Communist-front organization on the ground that it is controlled by, and is primarily operated for the purpose of aiding and supporting, the Communist Party. This finding corresponds to the section 3(4) definition of a Communist-front only if the Communist Party was a Communist-action organization, as defined by section 3(3), at the time of the finding against the American Committee.

No evidence was introduced at the hearing against the American Committee to establish that the Communist Party is or was a Communist-action organization. Instead, the Board (R. 16, ftn. 2) and the court below (R. 84) held that the American Committee was bound by the Board's determination, made in a prior proceeding against the Communist Party, that the latter organization was an action organization.

This preclusion of the American Committee by a finding made in a proceeding to which it was not a party violates the due process principle that a deprivation of liberty may not be accomplished without affording to the one deprived an opportunity to contest the factual premises on which the deprivation depends. *Noto* v. *United States*, 367 U.S. 290, 299; *Renaud* v. *Abbott*, 116 U.S. 277, 288. Cf. *Kirby* v. *United States*, 174 U.S. 47; *Cole* v. *Arkansas*, 333 U.S. 196, 201.

Moreover, the finding as to the Communist Party was of its nature on April 20, 1953, the date of the

order against it. Yet it precluded the American Committee as to the nature of the Party on June 27, 1960, the date of the Board's order against the American Committee. The constitutional validity of the order against the American Committee obviously depends, in the first place, on the Communist Party's having the characteristics of a Communist-action organization. By preventing the American Committee from showing that the Communist Party did not have such characteristics at the critical date,[47] the Act violates the principle that "the constitutionality of a statute predicated on the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." *United States* v. *Carolene Products Co.*, 304 U.S. 144, 153; *Chastleton Corp.* v. *Sinclair*, 264 U.S. 543; *Baker* v. *Carr*, 369 U.S. 186, 214. This denial of an opportunity to prove the contemporaneous facts was particularly serious because the Board's 1953 finding as to the Communist Party was itself based on "stale evidence" of Party activity prior to 1940. *Communist Party* v. *S.A.C.B.*, *supra*, at 134, n. 1 (dissenting opinion).

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[47] Among the circumstances which have changed since the Board issued its order against the Communist Party is the recognition that the basic premise of the Act and the Board's 1953 findings—that the world Communist movement is a monolithic, Soviet-directed conspiracy to destroy all free governments—is what Senator Fulbright calls "the master myth of the cold war." 110 Cong. Rec. 6029 (daily pagination). Senator Humphrey recently wrote: "The 'monolithic unity' of the Communist bloc is an archaic myth to which no one even bothers to pay lip service any more." Wash. Evening Star, Sept. 3, 1964.

D. The Act Is Invalid Because It Conflicts With the Privilege Against Self-Incrimination

The validity of the Communist-front provisions of the Act presuppose and depend on the validity of the Communist-action provisions. If an organization cannot constitutionally be found to be a Communist-action organization, then by definition there can be no Communist-front organization.

In the *Communist Party* case, *supra,* at 105-10, a bare majority of the Court refused to determine, as premature, the Party's contention that the Communist-action provisions of the Act are invalid because they conflict with the privilege against self-incrimination of the Party's officers, since they require the officers to incriminate themselves without affording them an opportunity to assert their privilege not to do so. Cf. *Boyd* v. *United States,* 116 U.S. 616. We ask the Court to reconsider that holding, and to reverse it and hold the Act invalid for the reasons stated in the dissenting opinions of Justices Douglas and Brennan.

The subsequent course of the litigation against the Communist Party emphasizes the lack of realism in the prematurity holding in the *Communist Party* case. The Communist Party has not registered, and it now appears likely that the privilege of its officers constitutes an unsurmountable barrier against prosecution of the Party and its officers for failure to register. See *Communist Party* v. *United States,* 331 F.2d 897, 813, cert. den. 377 U.S. 968, *sub nom. United States* v. *Communist Party.* The primary purpose of the Act having been frustrated because of the collision between the Act and the constitutional privilege of the Party's officers, it is pointless to allow the Act to operate for the purpose of putting out of business organizations

other than the Communist Party—particularly when their offense consists of perpetrating good deeds in the pursuit of laudable objectives.

CONCLUSION

The judgment below should be reversed with directions to set aside the order of the Board.

Respectfully submitted,

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APPENDIX

Statute Involved

Pertinent provisions of the Subversive Activities Control Act of 1950 (which is Title I of the Internal Security Act of 1950), as amended, 64 Stat. 987, 50 U.S.C. 781, et seq., are as follows. (The Act's section numbers are followed by the appropriate section numbers of 50 U.S.C. in brackets.)

Sec. 2 [781]. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that—

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of the world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6) of this section, such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts," which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method

of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of Communist members, representatives, and agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement.

(9) In the United States those individuals who knowingly and wilfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

(10) In pursuance of Communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above, already caused the establishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The agents of Communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

(12) The Communist network in the United States is inspired and controlled in large part by foreign agents who are sent into the United States ostensibly as attaches of foreign legations, affiliates of international organizations, members of trading commissions, and in similar capacities, but who use their diplomatic or semi-diplomatic

status as a shield behind which to engage in activities prejudicial to the public security.

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

Sec. 3 [782]. For the purposes of this title—

* * * * *

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist-action organization" means—

(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; and

(b) any section, branch, fraction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

(4A) The term "Communist-infiltrated organization" means any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or

who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces. . . .

(5) The term "Communist organization" means any Communist-action organization, Communist-front organization, or Communist-infiltrated organization.

• • • • •

Sec. 5 [784]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title, is registered or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful—

(1) For any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(A) in seeking, accepting, or holding any nonelective office or employment under the United States, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) to hold any nonelective office or employment under the United States; or

(C) in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(D) if such organization is a Communist-action organization, to engage in any employment in any defense facility; or

(E) to hold office or employment with any labor organization, as that term is defined in section 2(5) of the National Labor Relations Act, as amended (29 U.S.C. 152), or to represent any employer in any matter or proceeding arising or pending under the Act.

(2) For any officer or employee of the United States or of any defense facility with knowledge or notice that such organization is so registered or that such order has become final—

(A) to contribute funds or services to such organization;

* * * * *

(b) The Secretary of Defense is authorized and directed to designate and proclaim, and from time to time revise, a list of facilities, as defined in paragraph (7) of section 3 of this title, with respect to the operation of which he finds and determines that the security of the United States requires the application of the provisions of subsection (a) of this section. The Secretary shall promptly notify the management of any facility so listed; whereupon such management shall immediately post conspicuously, and thereafter while so listed keep posted, notice of such designation in such form and in such place or places as to give reasonable notice thereof to all employees of, and to all applicants for employment, in such facility. Such posting shall be sufficient to give notice of such designation to any person subject thereto or affected thereby . . .

Sec. 6 [785]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title is registered, or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful for any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or

(2) to use or attempt to use any such passport.

* * * * *

Sec. 7. [786].

* * * * *

(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

* * * * *

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

(1) The name of the organization and the address of its principal office.

(2) The name and the last-known address of each individual who is at the time of filing of such registration statement, and of each individual who was at any time during the period of twelve full calendar months next preceding the filing of such statement, an officer of the organization, with the designation or title of the office so held, and with a brief statement of the duties and functions of such individual as such officer.

(3) An accounting, in such form and detail as the Attorney General shall by regulations prescribe, of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full

calendar months next preceding the filing of such statement.

* * * * *

(5) In the case of any officer or member whose name is required to be shown in such statement, and who uses or has used or who is or has been known by more than one name, each name which such officer or member uses or has used or by which he is known or has been known.

(6) A listing, in such form and detail as the Attorney General shall by regulation prescribe, of all printing presses and machines including but not limited to rotary presses, flatbed cylinder presses, platen presses, lithographs, offsets, photo-offsets, mimeograph machines, multigraph machines, multilith machines, duplicating machines, ditto machines, linotype machines, intertype machines, monotype machines, and all other types of printing presses, typesetting machines or any mechanical devices used or intended to be used, or capable of being used to produce or publish printed matter or material, which are in the possession, custody, ownership, or control of the Communist-action or Communist-front organization or its officers, members, affiliates, associates, group, or groups in which the Communist-action or Communist-front organization, its officers or members have an interest.

(e) It shall be the duty of each organization registered under this section to file with the Attorney General on or before February 1 of the year following the year in which it registers, and on or before February 1 of each succeeding year, an annual report, prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the same information which by subsection (d) is required to be included in a registration statement, except that the information required with respect to the twelve-month period referred to in paragraph (2), (3), or (4) of such subsection shall, in such annual report, be given with respect to the calendar year

preceding the February 1 on or before which such annual report must be filed.

(f) (1) It shall be the duty of each organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records and accounts of money received and expended (including the sources from which received and purposes for which expended) by such organization.

* * * * *

Sec. 9 [788]. (a) The Attorney General shall keep and maintain separately in the Department of Justice—

* * * * *

(2) a "Register of Communist-Front Organizations", which shall include (A) the names and addresses of all Communist-front organizations registered under section 7, and (B) the registration statements and annual reports filed by such organizations thereunder.

(b) Such registers shall be kept and maintained in such manner as to be open for public inspection . . .

* * * * *

Sec. 10 [789]. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or determining that it is a Communist-infiltrated organization, or for any person acting for or on behalf of any such organization—

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of interstate or foreign commerce, any publication which is intended to be, or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or other-

wise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name or the organization appearing in lieu of the blank: "Disseminated by ....., a Communist organization"; or

(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by ....., a Communist organization."

Sec. 11 [790]. (a) Notwithstanding any other provisions of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under sections 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

(b) No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

* * * * *

Sec. 13 [792]. (a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this title is in fact required to register under such section,

he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

* * * * *

(f) In determining whether any organization is a "Communist-front organization", the Board shall take into consideration—

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

(1) that an organization is a Communist-action organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the fact and shall issue and cause to be served on such organization an order requiring such organization to register as such under section 7 of this title; . . .

* * * * *

Sec. 14 [793]. (a) The party aggrieved by any order entered by the Board under subsections (g), (h), (i), or (j) of section 13, or subsection (f) of section 13A, may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides. The findings of the Board as to the facts, if supported by the preponderance of the evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence shall be conclusive, and its

recommendations, if any, with respect to action in the matter under consideration. . . .

* * * * *

Sec. 15 [784] (a) If there is in effect with respect to any organization or individual a final order of the Board requiring registration under section 7 or section 8 of this title—

(1) such organization shall, upon conviction of failure to register, to file any registration statement or annual report, or to keep records as required by section 7, be punished for each such offense by a fine of not more than $10,000, and

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

(b) Any individual who, in a registration statement or annual report filed under section 7 or section 8, willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statement made or information given not misleading, shall upon conviction thereof be punished for each such offense by a fine of not more than $10,000, or by imprisonment for not more than five years, or by both such fine and imprisonment. For the purposes of this subsection—

(1) each false statement wilfully made, and each wilful omission to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall constitute a separate offense; and

(2) each listing of the name or address of any one individual shall be deemed to be a separate statement.

(c) Any organization which violates any provision of section 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000. Any individual who violates any provision of sections 5, 6, or 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000 or by imprisonment for not more than five years, or by both such fine and imprisonment.

Sec. 16 [795]. Nothing in this title shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, by the Board under this title.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	3
Statement	3
1. Control of petitioner by the Communist Party	4
a. The National Committee	4
b. The connection of the local committees with the American Committee	8
c. The connection of the local committees with the Communist Party	11
2. Petitioner's aid and support of the Communist Party	13
Summary of Argument	20
Argument:	
Introduction	32
I. The background of the Subversive Activities Control Act	36
A. The historical background of the Act	36
B. The background of the Communist-front provisions of the Act	47
C. The immediate evolution of the Act	51
II. The Board correctly found that petitioner is a Communist-front organization as defined in the Act	54
A. There is no occasion for a second judicial review of the Board's factual finding that petitioner is a Communist-front organization	55
B. The Board and the court below properly construed and applied the control component of Section 3(4)	60
1. The evidence supports the Board's finding that petitioner was controlled by the Communist Party	60
2. The evidence supports the Board's subsidiary findings concerning the control component	68

755-587—64——1

Argument—Continued
Introduction—Continued
II. The Board correctly, etc.—Continued
C. The Board and the court below properly construed and applied the aid component of Section 3(4) ..... Page 71
1. The aid component is satisfied by evidence that an organization gives aid and support to a Communist-action organization through activities which have no direct connection with overthrow of the government 71
2. The evidence supports the Board's finding that petitioner was primarily operated for the purpose of giving aid and support to the Communist Party 82
D. The Board and the court below properly construed and applied the definition of "organization" in Section 3(2) 93
1. The Board correctly construed the Act .. 93
2. The evidence supports the Board's finding 96
E. The Board did not err in limiting the cross-examination of government witness Lautner 97
III. The registration provisions of the Subversive Activities Control Act are constitutional 101
A. The authority of the Board to determine whether organizations are Communist fronts is constitutional 102
B. The authority of the Board to order disclosure is constitutional 106
1. The disclosure requirements do not violate the First Amendment 106
a. This Court's decision in *Communist Party* v. *Subversive Activities Control Board* is controlling 106

Argument—Continued
Introduction—Continued
III. The registration provisions, etc.—Continued
B. The authority of the Board, etc.—Continued
b. Even if the *Communist Party* case is not controlling, the registration provisions of the Act, as applied to Communist-front organizations, do not violate the First Amendment ..... Page 113
(i) The First Amendment permits indirect restraints on free speech, press, and assembly in some circumstances 114
(ii) The evil at which the Act strikes is one of the gravest that could befall the nation 120
(iii) In the light of the evil, the registration requirement does not invalidly restrict free speech, press, or association 127
2. The registration provisions do not violate the First Amendment or the due process clause of the Fifth Amendment on the ground of vagueness 133
3. Petitioner was not denied procedural due process because it was not allowed to relitigate whether the Communist Party is a Communist-action organization 141
4. The Board's definition of "organization" did not violate the First Amendment or the due process clause of the Fifth Amendment 146
5. The registration provisions of the Act do not violate the self-incrimination clause of the Fifth Amendment 148
a. This Court's decision in the *Communist Party* case is controlling 149
b. Even if the *Communist Party* case is not controlling, the Fifth Amendment has not been violated 151

Argument—Continued
Introduction—Continued
III. The registration provisions, etc.—Continued
B. The authority of the Board, etc.—Continued
5. The registration provisions, etc.—Con.
b. Even if the Communist, etc.—Con.
(i) The present case is not a proper vehicle for the litigation of the self-incrimination issues.... Page 151
(ii) In any event, the officers of petitioner having the duty under the Act and regulations to effect the registration will not be personally privileged to refuse to do so 154
Conclusion 163
Appendix A 165
Appendix B 183
Appendix C 227

CITATIONS

Cases:

Albertson v. *Subversive Activities Control Board*, 332 F. 2d 317 141
Alford v. *United States*, 282 U.S. 687 ..... 25, 99
American Communications Ass'n. v. *Douds*, 339 U.S. 382 ..... 36, 91, 114, 116, 119, 144
American Power Co. v. *Securities and Exchange Commission*, 329 U.S. 90 ..... 135, 140
Apex Hosiery Co. v. *Leader*, 310 U.S. 469 36
Aptheker v. *Secretary of State*, 378 U.S. 500 ..... 122, 180
Associated Press v. *National Labor Relations Board*, 301 U.S. 103 116
Associated Press v. *United States*, 326 U.S. 1 116
Baggett v. *Bullitt*, 377 U.S. 360 ..... 29, 137
Baltimore & Ohio R.R. v. *Interstate Commerce Commission*, 221 U.S. 617 ..... 32, 157
Barenblatt v. *United States*, 360 U.S. 109 ..... 28, 119, 122, 124
Bates v. *Little Rock*, 361 U.S. 516 ..... 112, 117, 132

Cases—Continued

	Page
Blau v. *Subversive Activities Control Board*, 322 F. 2d 397	232
Blau v. *United States*, 340 U.S. 159	161
Braden v. *United States*, 365 U.S. 431	119
Brown v. *Walker*, 161 U.S. 591	159, 160
Bryant v. *Zimmerman*, 278 U.S. 63	117, 118, 127
Burroughs v. *United States*, 290 U.S. 534	27, 115, 120, 127
California v. *Taylor*, 353 U.S. 553	149
California Labor School v. *Subversive Activities Control Board*, 322 F. 2d 393	228
Capriola v. *United States*, 61 F. 2d 5	100
Carlson v. *Landon*, 342 U.S. 524	125
Christopher v. *Brusselback*, 302 U.S. 500	144
Communist Party v. *Control Board*, 367 U.S. 1	21, 22, 26, 27, 29, 30, 35, 57, 60, 63, 70, 77, 89, 91, 98, 103, 106, 108, 113, 132, 133, 136, 139, 142, 145.
Communist Party v. *Subversive Activities Control Board*, 223 F. 2d 531, affirmed, 367 U.S. 1	66, 154, 157
Communist Party v. *United States*, 331 F. 2d 807, certiorari denied, 377 U.S. 968	150, 156, 158
Consolidated Edison Co. v. *National Labor Relations Board*, 305 U.S. 197	87
Counselman v. *Hitchcock*, 142 U.S. 547	160
Cramp v. *Board of Public Instruction*, 368 U.S. 278	29, 133, 137
Crown Cork & Seal Co. v. *Ferdinand Gutmann Co.*, 304 U.S. 159	146
Curcio v. *United States*, 354 U.S. 118	152, 156
DeJonge v. *Oregon*, 299 U.S. 353	131
Dennis v. *United States*, 341 U.S. 494	36, 37, 41, 45, 114, 122
Duignan v. *United States*, 274 U.S. 195	149
Electric Bond & Share Co. v. *Securities and Exchange Commission*, 303 U.S. 419	153
Emspak v. *United States*, 349 U.S. 190	152
Esgee Co. v. *United States*, 262 U.S. 151	152, 156
Fahey v. *Mallonee*, 332 U.S. 245	140
Federal Trade Commission v. *Baird*, 194 U.S. 25	87
Federal Trade Commission v. *Cement Institute*, 333 U.S. 683	22, 67, 87
Galvan v. *Press*, 347 U.S. 522	28, 122, 124
Gay's Gold, 13 Wall. 358	161

Cases—Continued

	Page
General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175	146
Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539	119
Hale v. Henkel, 201 U.S. 43	159
Hampton & Co. v. United States, 276 U.S. 394	140
Hansberry v. Lee, 311 U.S. 32	30, 143
Harisiades v. Shaughnessy, 342 U.S. 580	124
Haufrecht v. Subversive Activities Control Board, 322 F. 2d 403	227
Herndon v. Lowry, 301 U.S. 242	131
Hoffman v. United States, 341 U.S. 479	160
Holy Trinity Church v. U.S., 143 U.S. 457	36
Husty v. United States, 282 U.S. 694	149
Jacobson v. Massachusetts, 197 U.S. 11	160
Jefferson School of Social Science v. Subversive Activities Control Board, 331 F. 2d 76	141, 229
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123	49, 103
Kennedy v. Mendoza-Martinez, 372 U.S. 144	122
Killian v. United States, 368 U.S. 231	91
Labor Youth League v. Subversive Activities Control Board, 331 F. 2d 76	229
Lanzetta v. New Jersey, 306 U.S. 451	135
Lawn v. United States, 355 U.S. 339	149
Lawson v. United States, 176 F. 2d 149, certiorari denied 339, U.S. 843	122
Lewis Publishing Co. v. Morgan, 229 U.S. 228	116, 127
Lichter v. United States, 334 U.S. 742	140
Loesch v. Federal Trade Commission, 257 F. 2d 887, certiorari denied, 358 U.S. 883	99, 100
Lorain Journal v. United States, 342 U.S. 143	116
Louisiana v. National Association for the Advancement of Colored People, 366 U.S. 293	117
Mabee v. White Plains Publishing Co., 327 U.S. 178	116
Mason v. United States, 244 U.S. 362	160
McPhaul v. United States, 364 U.S. 372	156
Moyer v. Peabody, 212 U.S 78	142
Mulford v. Smith, 307 U.S. 38	140
National Labor Relations Board v. Fainblatt, 306 U.S. 601	127

Cases—Continued

	Page
National Labor Relations Board v. *Falk Corp.*, 308 U.S. 453	116
National Labor Relations Board v. *Greider Machine Tool and Die Co.*, 142 F. 2d 163, certiorari denied, 323 U.S. 724	100
National Labor Relations Board v. *Imparato Stevedoring Co.*, 250 F. 2d 297	87
National Association for the Advancement of Colored People v. *Alabama*, 357 U.S. 499	112, 117, 132
National Broadcasting Co. v. *United States*, 319 U.S. 190	116
National Council v. *Subversive Activities Control Board*, 322 F. 2d 875	141, 227
National Labor Relations Board v. *Hearst Publications*, 322 U.S. 111	21, 57
National Labor Relations Board v. *Link-Belt Co.*, 311 U.S. 584	58
National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261	58
National Labor Relations Board v. *Pittsburgh Steamship Co.*, 340 U.S. 498	21, 58
National Labor Relations Board v. *Service Wood Heel Co.*, 124 F. 2d 470	87
National Labor Relations Board v. *Virginia Electric & Power Co.*, 314 U.S. 469	116
National Licorice Co. v. *National Labor Relations Board*, 309 U.S. 350	146
New York Indians v. *United States*, 170 U.S. 1	161
Oklahoma Press Publishing Co. v. *Walling*, 327 U.S. 186	116, 152
Opp Cotton Mills v. *Administrator*, 312 U.S. 126	29, 140
Panhandle Pipe Line Co. v. *Federal Power Comm.*, 169 F. 2d 881, certiorari denied, 335 U.S. 854	89
Patterson v. *Subversive Activities Control Board*, 322 F. 2d 395	228
Peters v. *Hobby*, 349 U.S. 331	153
Quinn v. *United States*, 349 U.S. 155	37, 152
Rabinowitz v. *Kennedy*, 376 U.S. 605	159
Reilly v. *Pinkus*, 338 U.S. 269	100
Rich v. *United States*, 262 F. 2d 415	100

Cases—Continued

	Page
Rochester Telephone Corp. v. *United States*, 307 U.S. 125	60
Rogers v. *United States*, 340 U.S. 367	32, 152, 156, 159, 161
Scales v. *U.S.*, 367 U.S. 203	41
Schenck v. *United States*, 249 U.S. 47	114, 131
Securities and Exchange Comm. v. *Cheney Corp.*, 332 U.S. 194	80
Shelton v. *Tucker*, 364 U.S. 479	118
Simon v. *American Tobacco Co.*, 192 Fed. 662	162
Smith v. *United States*, 337 U.S. 137	152
Standard Oil Co. v. *United States*, 221 U.S. 1	67
Sunkist Growers, Inc. v. *Winckler & Smith Citrus Products Co.*, 370 U.S. 19	95
Sunshine Coal Co. v. *Adkins*, 310 U.S. 381	136, 140
Sweezy v. *New Hampshire*, 354 U.S. 234	124
Swift & Co. v. *United States*, 317 F. 2d 53	84
Talley v. *California*, 362 U.S. 60	119
Thomas v. *Collins*, 323 U.S. 516	131, 132
Trailmobile Co. v. *Whirls*, 331 U.S. 40	146
Ullman v. *United States*, 350 U.S. 422	160
United Public Workers v. *Mitchell*, 330 U.S. 75	27, 117, 120
United States v. *Darby*, 312 U.S. 100	127
United States v. *Dennis*, 183 F. 2d 201, affirmed, 341 U.S. 494	45, 67, 123
United States v. *Easterday*, 57 F. 2d 165	100
United States v. *A. H. Fiesher Lumber Co.*, 162 F. 2d 872	161
United States v. *42 Jars*, 162 F. Supp. 944, affirmed, 264 F. 2d 666	162
United States v. *German American Vocational League*, 153 F. 2d 860, certiorari denied, 328 U.S. 833	43
United States v. *Harriss*, 347 U.S. 612	27, 115, 120, 127
United States v. *Josephson*, 165 F. 2d 82	122
United States v. *Monia*, 317 U.S. 424	152
United States v. *Murdock*, 284 U.S. 141	67, 152, 159
United States v. *Oregon Medical Society*, 343 U.S. 326	67
United States v. *Peace Information Center*, 97 F. Supp. 255	43, 115
United States v. *Reading Co.*, 253 U.S. 26	67
United States v. *3963 Bottles*, 265 F. 2d 332	161
United States v. *Sullivan*, 274 U.S. 259	158

Cases—Continued

	Page
United States v. *White*, 322 U.S. 694	31, 152, 155
Vajtauer v. *Commissioner of Immigration*, 273 U.S. 103	152
Viereck v. *United States*, 318 U.S. 236	26, 43, 105, 115, 120, 128
Washington Pension Union v. *Subversive Activities Control Board*, 322 F. 2d 398	231
Weinstock v. *Subversive Activities Control Board*, 331 F. 2d 75	142, 230
Wheeler v. *United States*, 226 U.S. 478	156
Wickard v. *Filburn*, 317 U.S. 111	127
Wiemann v. *Updegraff*, 344 U.S. 183	132
Wilson v. *United States*, 221 U.S. 361	156
Willapoint Oysters, Inc. v. *Ewing*, 174 F. 2d 676	87
Yakus v. *United States*, 321 U.S. 414	140
Constitution:	
First Amendment	26, 30, 106, 147
Fifth Amendment	26, 30, 106, 141
Statutes:	
Administrative Procedure Act, 5 U.S.C. 1001	87, 98
Alien Registration Act of 1940, Title I (Smith Act), 54 Stat. 670 (18 U.S.C. 2385)	40, 41, 52
Communist Control Act of 1954, 68 Stat. 775 (50 U.S.C. 841, *et seq.*)	182
Federal Corrupt Practices Act (Act of February 28, 1925), c. 368, Title III, §§ 302–305, 43 Stat. 1070 (2 U.S.C. 241–244)	115
Federal Regulation of Lobbying Act (Act of August 2, 1946), Title III, § 305, 60 Stat. 840 (2 U.S.C. 264)	115
Foreign Agents Registration Act (Act of June 8, 1938), 52 Stat. 631 (22 U.S.C. 611, *et seq.*)	41, 47, 51, 115
Immigration and Nationality Act of June 27, 1952, c. 477, 66 Stat. 163	179
National Labor Relations Act, as amended by the Labor Management Relations Act of 1947, § 101, 61 Stat. 146 (29 U.S.C. 504)	144
Subversive Activities Control Act of (September 23) 1950 (Title I of Internal Security Act), 64 Stat. 987 (as amended, 50 U.S.C. 781, *et seq.*):	
Generally	32, 54, 165
§ 2	33, 73, 108, 130, 165

Statutes—Continued
Subversive Activities Control Act—Continued Page
§ 2(1) 130, 134, 166
§ 2(4) 166
§ 2(5) 166
§ 2(6) 166, 178
§ 2(7) 33, 34, 72, 165, 167
§ 2(15) 69, 167
§ 3(1) 24, 94
§ 3(2) 24, 88, 94, 98
§ 3(3) 33, 134, 168, 172, 182
§ 3(4) 23, 29, 32, 54, 57, 69, 74, 78, 80, 82, 96, 126, 133, 136, 137, 139, 168, 172, 182
§ 3(4A) 182
§ 3(5) 182
§ 3(7) 175, 178
§ 4(f) 32
§ 5 181
§ 5(a)(1) 78, 178, 180
§ 5(a)(2)(A) 180
§ 5(a)(2)(B) 180
§ 6(a) 180
§ 6(b) 180
§ 7 ..... 113, 168, 175, 176
§ 7(a) 168, 171
§ 7(b) 168, 171
§ 7(c)(1) 168
§ 7(c)(2) 168
§ 7(c)(3) 169
§ 7(d) 169
§ 7(e) 169
§ 7(f)(1) 169
§ 7(f)(2) 170
§ 7(g) 170
§ 7(h) 173, 181
§ 8 ..... 142, 175, 181
§ 8(a) 174
§ 8(b) 174
§ 8(c) 174
§ 9(a) 170
§ 9(b) 171
§ 9(d) 170

Statutes—Continued

Subversive Activities Control Act—Continued

Page

§ 10 ..... 177, 181, 182
§ 10(1) 177
§ 10(2) 177
§ 11 182
§ 11(a) 178
§ 11(b) 178
§ 12 171
§ 13 ..... 70, 145, 169, 176, 182
§ 13(a) 171, 174
§ 13(b) 144, 170, 175, 176
§ 13(c) 171, 174, 176
§ 13(d) 171, 174, 176
§ 13(e) 139, 171
§ 13(f) 29, 68, 73, 138, 172
§ 13(f)(1) 68, 138
§ 13 (f)(2) 69, 90, 95, 138
§ 13(f)(3) 72, 73, 138
§ 13(f)(4) 90, 138
§ 13(g)(1) 172
§ 13(g)(2) 175
§ 13(h)(1) 172
§ 13(h)(2) 175
§ 13(i) 176
§ 13(j) 176
§ 13(k) 173
§ 13A 182
§ 13A(h) 182
§ 13A(j) 182
§ 14(a) 58, 176
§ 14(b) 169, 176, 177
§ 15(a) 121, 180, 181
§ 15(a)(1) 180
§ 15(a)(2) 181
§ 15(b) 181
§ 15(b)(1) 181
§ 15(b)(2) 181
§ 15(c) 177, 181
§ 17 181
§ 22 179
§ 25 179

Statutes—Continued
Subversive Activities Control Act—Continued
Page
§ 32 ..... 102, 183
Voorhis Act, 54 Stat. 1201, 18 U.S.C. 2386 ..... 43, 51
29 U.S.C. 152 (5) 178
Rules of the Supreme Court:
Rule 23(1)(c) 146
Rule 40 146
Congressional Materials:
94 Cong. Rec. 2893 51
94 Cong. Rec. 9028 52
94 Cong. Rec. 9029-32 53
Hearings before a House Special Committee on Un-American Activities, 76th Congress, 1st Sess. 38, 39, 195, 197
Hearings before a House Special Committee to Investigate Communist Activities in the United States, 71st Cong., 2d Sess. 38, 40
Hearings on H.R. 1884 and 2122, 80th Cong. 2d Sess. 47, 74
Hearings on H.R. 4422 and H.R. 4581, 80th Cong. 2d Sess. 50
H.R. 5852, 80th Cong. 2d Sess. 51, 52
H. Rep. No. 1381, 75th Cong. 1st Sess. 41
H. Rep. No. 2582, 76th Cong. 3rd Sess. 43, 44
H. Rep. No. 1884, 80th Cong. 2d Sess. 52
H. Rep. No. 2980, 81st Cong. 2d Sess. 75
Internal Security Manual, Sen. Doc. 47, 83rd Cong., 1st Sess. 38, 40, 122
S. 2311, 81st Cong. 1st Sess. 53
S. Rep. No. 1358, 81st Cong. 2d Sess. 54
S. Rep. No. 2369, 81st Cong. 2d Sess. 54
Strategy and Tactics of World Communism, Report of Subcommittee No. 5 of the Committee on Foreign Affairs on National and International Movements. H. Doc. No. 619, 80th Cong., 2d Sess. 47
Miscellaneous:
American Law Institute, *Restatement*, Judgments 143
Bittleman, "The Task of the Hour," *The Communist*, October, 1921 189
28 C.F.R. 11.205 173
Chamberlin, *Blueprint for World Conquest* 195

Miscellaneous—Continued

Page

Cohen and Fuch, *Communism's Challenge and the Constitution*, 34 Corn. L.Q. 182 ..... 45, 53

Communist, The, October 18, 1919 194

Daily Worker, June 1, 1929 40

Daniels, *A Documentary History of Communism* 207

Degras, *The Communist International, 1917–1940: Documents* 204

Dimitroff, *The United Front: The Struggle Against Fascism and War* 205, 206

Draper, *The Roots of American Communism* 184, 194, 221

Ernest & Katz, Speech: Public and Private, 53 Colum. L. Rev. 620 128

Hathaway, "Let Us Penetrate Deeper into the Rural Areas," *The Communist*, July 1935 210

Hathaway, "On the Use of Transmission Belts in Our Struggle for the Masses," *The Communist*, May 1931 190

Hunt, *The Theory and Practice of Communism* 183, 185, 199

Hyde, *The Peaceful Assault: The Pattern of Subversion* 201

Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Exposure*, 10 U. of Chi. L. Rev. 107 ..... 42, 44

Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Suppression*, 37 Ill. (Northwestern Univ.) L. Rev. 193 ..... 44, 128

International Press Correspondence, August 1, 1928 (Muenzenburg speech) 192

Kintner and Kornfeder, *The New Frontier of War* 223

Kirkpatrick, *Target the World* 223

Laski, *Communism* 196

Left Wing Communism: An Infantile Disorder 193

Lenin, XIX *Collected Works* 208

Lenin, XXVI *Collected Works* 188

Lenin on *Organization* 197

Lenin, II *Selected Works* 194

Lowenstein, *Legislative Control of Political Extremism in European Democracies*, 38 Colum. L. Rev. 591–622 37

Meltzer, *Required Records, The McCarran Act and the Privilege Against Self-Incrimination*, 18 U. of Chi. L. Rev. 687 156

Miscellaneous—Continued

Page

Moore, *The Communist Party of the USA: An Analysis of a Social Movement*, 39 Am. Pol. Sci. Rev. 31 ... 45, 221

Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs*, 47 Mich. L. Rev. 181 ... 128

Official Report on the Expulsion of Communist Dominated Organizations from the C.I.O., C.I.O. Publication No. 254 ... 210

Overstreet, *What We Must Know About Communism* ... 204, 206, 207, 208, 223

Report of the President's Committee on Civil Rights, *To Secure These Rights* (1947) ... 128

Reuther, *Selected Papers* ... 211

Selznick, *The Organizational Weapon: A Study of Bolshevik Strategy and Tactics* ... 183, 198, 200, 204

Smith, *Democratic Control of Propaganda Through Registration and Disclosure*, 6 Pub. Opin. Quarterly 27 ... 128

Stalin, *Foundations of Leninism* ... 203 206, 226

Stalin, *Problems of Leninism* ... 187, 188

Story, *Constitution* (1840) ... 114

Sutherland, *Freedom and Internal Security*, 64 Harv. L. Rev. 383 ... 128, 132

Trotsky, "The Tactics of the United Front," *Fourth International*, March, 1941 ... 185, 186, 202

Tyler, *The United Front* ... 201, 209

VIII Wigmore, *Evidence* (3d ed. 1940) ... 152

Workers Monthly, The, September 1926 ... 194

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the court of appeals (R. 71–84) is reported at 331 F. 2d 53.

JURISDICTION

The judgment of the court of appeals was entered on December 17, 1963 (R. 91), and a petition for a writ of certiorari was filed on March 12, 1964. The petition was granted on April 27, 1964 (377 U.S. 915; R. 181). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1) and Section 14(a) of the Subversive Activities Control Act of 1950, 50 U.S.C. 793.

QUESTIONS PRESENTED

The Subversive Activities Control Act of 1950 provides for the registration of any "Communist-front organization," which is defined (Section 3(4)) as an organization "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Petitioner was found by the Subversive Activities Control Board to be controlled by, and to be operated primarily to give aid and support to, the Communist Party, which the Board had previously found to be a Communist-action organization. The questions presented are:

1. Whether the Board correctly interpreted and applied the Act.

2. Whether the Board's findings are supported by substantial evidence.

3. Whether the Board committed prejudicial error in limiting cross-examination of a government witness.

4. Whether the provisions of the Subversive Activities Control Act of 1950 providing for the registration of "Communist-front" organizations violate the First Amendment.

5. Whether the Act, as construed by the Board, is unconstitutionally vague under the First Amendment or the due process clause of the Fifth Amendment.

6. Whether the Act violates the due process clause of the Fifth Amendment by not allowing petitioner to relitigate whether the Communist Party was a Communist-action organization.

7. Whether the registration provisions violate the self-incrimination clause of the Fifth Amendment.[1]

STATUTE INVOLVED

The pertinent provisions of the Subversive Activities Control Act, 50 U.S.C. 781, *et. seq.*, are set forth in the Appendix to the petition, pp. 26a–39a.[2]

STATEMENT

The Attorney General began this proceeding on April 22, 1953, by filing with the Subversive Activities Control Board a petition for an order requiring petitioner to register as a Communist-front organization under the Subversive Activities Control Act (Tr. 7510). On August 28, 1953, the Attorney General filed an amended petition (R. 2–7). Hearings were held before a hearing examiner of the Board, who issued a decision on September 10, 1957, recommending that petitioner be ordered to register (R. 16). On June 27, 1960, the Board issued a Report and Order determining petitioner to be a Communist-front organization and ordering it to register (R. 70).

On appeal, the court of appeals remanded the case to the Board to allow petitioner to introduce additional evidence that the testimony of a witness for the Attorney General, Barbara Hartle, was false (R. 72).

[1] Petitioner also raises the issue whether the Board's construction of Section 3(2)—which defines the meaning of "organization"—violates the First Amendment and the due process clause of the Fifth Amendment. This question, however, was not raised in the petition for a writ of certiorari and is not properly before this Court (see pp. 146–148 below).

[2] The entire Act is analyzed in Appendix A below.

On March 8, 1962, the Board issued a "Report on Reconsideration," in which it held that Mrs. Hartle's testimony was credible and reaffirmed its earlier order (R. 72). On December 17, 1963, the court of appeals, one judge dissenting, affirmed the Board's order (R. 71–90).

The evidence and findings of the Board are as follows:[3]

1. *Control of Petitioner by the Communist Party.*—*a. The National Committee.*—The American Committee for Protection of Foreign Born is an organization which has existed in the United States since 1932 or 1933, with its main office and headquarters in New York City (Tr. 262–263; R. 20). Petitioner grew out of the International Labor Defense, the American section of International Red Aid which had its headquarters in Moscow (Tr. 255–256; R. 37).[4] Final policy

[3] In supporting the statements made, we refer first to the evidence—the transcript of the proceedings before the Board ("Tr.") or exhibits introduced either by the Attorney General ("A.G. Ex.") or by petitioner ("P. Ex.")—and then to the Board's findings, if any, based on this evidence, in its Report ("R.").

Much of the evidence supports both petitioner's control by, and support of, the Communist Party. We have described such evidence in the portion of the Statement to which it seems most relevant.

[4] While the Board did not explicitly find that petitioner arose from the International Labor Defense, it did find that petitioner originated in 1932 or 1933 (R. 20), and that a "Committee for Protection of Foreign Born" was organized in 1932 by International Labor Defense (R. 37). A government witness testified that, when ~~petitioner was organized in 1933, one of its secretaries was Dwight Morgan~~ (Tr. 266). Petitioner's witness Abner Green testified that in 1935, when he first became connected with petitioner, Irving Novick

the Committee for Protection of Foreign Born was organized in 1933, one of its secretaries was either Fred Biedenkapp or Dwight Morgan

decisions in the International Labor Defense were made by a Communist fraction of that organization or by Robert Minor, a member of the Communist Party's Central Committee and the liaison man between the Party and the Defense (Tr. 252–254; R. 37). In 1932, as a result of a suggestion by Minor, a "Committee for Protection of Foreign Born" was organized to take over International Labor Defense's legal work in deportation cases (Tr. 262–263; R. 37).

Petitioner's constitution provides that it shall be a "non-membership" body (P. Ex. 88; R. 25, 41). Consequently, its annual conferences, which review the past year's work and adopt general programs, are attended by delegates from various organizations and any interested members of the general public (Tr. 4873–4875, 2462–2465, 2489; R. 55). Both under its constitution and in practice, petitioner's activities are actually run by the administrative and particularly the executive secretaries (Tr. 4289, 4572; R. 31, 56, 57). While petitioner had co-chairmen and honorary co-chairman, they had little to do with its actual opera-

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and Dwight Morgan were in charge of its office (Tr. 4806, 4811). During 1935 Dwight Morgan, identified as the secretary of the American Committee for the Protection of Foreign Born, wrote articles for the *Daily Worker* on deportation and similar subjects (A.G. Exs. 96, 97, 109). Since there was no other evidence concerning petitioner's origins, it is clear that the Board, not surprisingly, concluded that the Committee for Protection of Foreign Born, which had the purpose of defending Party members, was the same as the American Committee for Protection of Foreign Born, which had the same purpose.

tions (Tr. 4193, 4242–4244, 4288–4289, 4293, 7015–7016, 7035–7036, 7040, 7053; R. 32, 56).

From December 1941 until his death in 1959, petitioner's executive secretary and dominant figure was Abner Green (Tr. 4819; R. 28). John Lautner testified that early in 1942, when he was an official of the Communist Party, he and another Party functionary, Avro Landy, were assigned by the Party to decide a dispute between Irving Novick, then petitioner's leader, and Green; that Green and Novick were both Party members and subject to Party discipline; and that, after Lautner and Landy met with Green and Novick at Communist Party headquarters in New York, they decided that Green should be the "head" of petitioner (Tr. 991–996, 1093; R. 29). Lautner also testified that Green attended the 1948 convention of the Communist Party, that he attended other Party meetings, and that he (Lautner) saw Green in the Party building on numerous occasions between 1948 and 1950, when Lautner left the Party (Tr. 1007, 1094–1095; R. 28).

Lautner also testified that he had known Harriet Barron, who was administrative secretary of the Committee from 1945 or 1946 through the time of the hearing, as a Party member (Tr. 1013, 1196–1199; R. 31). He attended Party meetings with her in the 1930's and 1940's and had done Party business with her (Tr. 1013, 1190–1199; R. 31). According to Lautner, petitioner's leaders, including Green and Miss Barron, "attended Party meetings and had the benefit of the discussions and deliberations of the Party on all poli-

cies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organization" (Tr. 1005; R. 40).

Barbara Hartle, formerly a leading official of the Communist Party in the State of Washington, testified that Henry Huff, the chairman of the Party District, reported to the District Board that he had met with Green and the executive secretary of petitioner's North-West Committee[5] on a visit Green had made to this local committee (Tr. 1599–1600; R. 30). Later, in 1953, Green was present at a luncheon meeting of the defendants in a Smith Act trial in Seattle at which he talked with Huff concerning the work of the American Committee and the progress of its North-West Committee (Tr. 1547, 1597–1600; R. 30).

Mary Markward, another former Party member, testified that Dorothy Strange, who was naturalization aid director of petitioner from 1948 until the position was abolished in 1952, was a Party member. Miss Strange was elected to the Party District Committee and Board in 1945 and worked in the Party district office in the District of Columbia. (Tr. 3161–3163; R. 41). Miss Strange told Mrs. Markward that the work she (Miss Strange) was doing in petitioner was for the benefit of the Party (Tr. 3160–3163; R. 41).

The Board concluded that Green and Miss Barron were members of the Communist Party, that the

[5] See pp. 8–10 below as to the evidence that the various local Committees for Protection of Foreign Born were part of the American Committee.

Party had selected Green as the leader of the Committee, that Green and Miss Barron controlled the national organization as representatives of the Party, and that petitioner's activities were controlled by Party members (R. 31, 56, 57).

b. The Connection of the Local Committees With the American Committee.—Besides the American Committee in New York, local organizations functioned in other places under names like the "New England Committee for Protection of the Foreign Born." The official organ of the American Committee, *The Lamp,* which Green edited, reported in detail on these committees (A.G. Exs. 24, 30, 35; R. 23). It, as well as other publications of the American Committee, frequently listed the addresses of the local committees under the heading of "American Committee for Protection of Foreign Born," designated the local offices simply as "Mid-West," "North-West," etc., and treated the activities of the local committees as part of its own activities (A.G. Exs. 19, 25 (p. 4), 56, 166; P. Exs. 84, 197; R. 23, 25–26). While the American Committee on several occasions listed various outside organizations as aiding its own programs, it never so listed the local committees (See A.G. Exs. 171, 180, 182, 244; P. Ex. 213; R. 23, note 1). In the annual reports of its general counsel the American Committee described legal action it had taken on a nationwide basis without any indication that the cases were being handled by separate organizations (A.G. Ex. 17; P. Ex. 117; see also R. 23).

The August 1949 issue of *The Lamp* stated that a North-West Committee for Protection of the Foreign

Born had been established "as a part of" the American Committee (P. Ex. 151, p. 4; R. 22). The North-West Committee published a pamphlet which described itself as "affiliated to the American Committee" and listed the officers and sponsors of the American Committee before its own (A.G. Ex. 34; R. 22). *The Lamp* said in a 1948 issue that "[t]he National Office of the American Committee is located in New York" and "[a] Midwestern Office is maintained in Chicago" (A.G. Ex. 198; R. 22). A brochure issued by the Mid-West Committee upon its formation said that the Committee "functions as a part of a national organization, the American Committee for Protection of Foreign Born" (A.G. Ex. 256; R. 22).

The American and local committees worked closely together. The American Committee initiated the organization of the Mid-West and New England Committees (Tr. 5136–5138, 5144, 4079–4086, 6955–6956, 6962; R. 24) and the reorganization of the Los Angeles Committee (Tr. 2377, 6869; R. 24). The local committees sent "delegates" to the annual conferences of the American Committee (Tr. 2462–2465, 2489, 5188, 5366–5367, 6821, 6875; R. 54). The New England and Los Angeles Committees published leaflets urging contributions to the American Committee (P. Ex. 22, 67).

If a problem arose about an alien in Chicago, which could not be handled by mail, Green sent him the name and address of the Mid-West Committee (Tr. 5131). The Northern California Committee handled the case of Dr. Krishna Chandra, but the American Committee obtained counsel to represent him (P. Ex.

22; Tr. 6568–6569; see also Tr. 5211–5213; R. 23). Abner Green arranged the speaking tour of two women whose husbands' cases were being handled by the Los Angeles Committee (Tr. 2606, 2614–2615). Green made numerous trips to visit the local committees (Tr. 2377, 6555, 6559–6560, 6701, 6869, 6890, 6955–6956, 6962; R. 24). The former executive secretary of the Los Angeles Committee testified that Green acted as coordinator of all area committees (Tr. 2398, 2404; R. 24). Numerous officers of the American Committee also served as officers of local committees (Tr. 4001, 4020, 4039–4040, 4076, 4389, 5189, 5790, 5803, 6516, 6659; R. 24–25, 38, note 1).

The Board found that (R. 27):

> The fact that the area committees have their own officers and other indicia of day to day autonomy is not inconsistent with their being associated with the American Committee. Such characteristics are commonplace in organizations consisting of a national body and affiliated branches or chapters. We find on the entire record that the American Committee and the various area or local committees are associated together for joint action on particular subjects. Together they constitute a voluntary association and one organization within the meaning of the term "organization" set forth in section 3(2) of the statute.[8]

[8] Section 3(2) of the Act provides that "The term 'organization' means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects."

c. The Connection of the Local Committees with the Communist Party—The organization of the North-West (Washington State) Committee resulted from discussions in Communist Party meetings in Seattle about the need for a local branch of the American Committee to defend Party members (Tr. 1584, 1586–1588, 2980–2984, 5179; R. 38). Marion Kinney, a Party member, was assigned by Party officials in late 1948 or early 1949 to start the local committee (Tr. 1587–1588, 1736; R. 33). She received instructions from Party officials as to how this should be done and reported her progress to them (Tr. 2882–2886; R. 33, 37–38). Professor Herbert J. Phillips, another Party member, and later Marion Kinney, who was relieved of other Party duties for this purpose, served as executive secretary of the North-West Committee[7] (Tr. 1586–1588, 2980, 2983–2986, 3115, 3124, 3128, 5193; R. 33–34). Mabel Conrad, the treasurer, was also identified as a Party member (Tr. 1590; R. 34).

Evelyn Abelson was the executive secretary, and Bess Steinberg was the administrative and later the executive secretary, of the Western Pennsylvania Committee. Witnesses testified that Miss Abelson and Miss Steinberg were Party members, that Miss Steinberg attended closed, policy meetings of the Party and 30 or 40 Party district conferences, and that Miss Abelson attended Party meetings and collected Party dues (Tr. 344, 353–354, 510–511, 622–623; R. 34). Joe Mankin, who served at one time as

[7] The local committees, like the national, were run by their executive secretaries (*e.g.*, A. G. Ex. 62; R. 33, 56–57).

administrative secretary of the Western Pennsylvania Committee, was also a Party member (Tr. 364).

The Michigan Committee had Saul Grossman, a Party member, as its executive secretary for years after its founding in 1947, and he was still an officer at the time of the hearing in 1955 (Tr. 1331–1339, 1528–1529, 1536; R. 34). Peggy Wellman, also a Party member, was administrative secretary and later executive secretary (Tr. 1553–1554, 1560, 5228; R. 34–35). Evidence showed that the Michigan Committee was established to defend foreign-born members of the Communist Party (see p. 14 below).

The executive secretary of the New England (Boston) Committee until approximately 1953 was Ruth Hillsgrove, who was identified as a Party member by James Glatis who had attended Party schools and meetings with her (Tr. 745, 748–749, 800–801, 803–809; R. 34).

The executive secretary of the Los Angeles Committee from 1949 to 1951 was Delphine Smith, who, according to a witness, admitted that she was a member of the Communist Party (Tr. 2447, 2701; R. 35).[3]

The Board concluded that (R. 35):

> [T]he effective management, direction, and supervision of the local branches of [petitioner] are substantially and primarily performed by and are under the control of members and rep-

[3] The testimony of witness Czarnowski, who testified at length about the Mid-West Committee, was stricken (R. 19). There were also local committees in Minneapolis, Oregon, San Francisco, and Philadelphia, as to which there was only incidental reference in the record (R. 21–22).

resentatives of the Communist Party. In view of our findings *supra* as to the leadership of the national organization it follows that the entire organization (national and locals) is effectively under the management, direction and supervision, and controlled by members and representatives of the Communist Party.

2. *Petitioner's Aid and Support of the Communist Party.*—The Communist Party has long had as a major objective winning the adherence of the foreign born. At its eighth convention in 1934, it issued a declaration stating that "the foreign born workers constitute a revolutionary factor of the utmost importance" and describing methods for "drawing the foreign born workers into the main stream of the class struggle, into the Communist Party and the mass organizations, particularly the trade unions" (A.G. Ex. 1, p. 701; R. 36).

Even before 1934, the Party put this program into effect. In the early 1930's the International Labor Defense, which was the American section of International Red Aid and which was controlled by "a Communist fraction," attempted to provide legal defense of persons arrested as a result of involvement in working class activity, to organize mass demonstrations and petitions concerning such arrests, and to recruit members to the Communist Party (Tr. 237, 239, 268; R. 37). About eighty percent of the deportation cases handled by International Labor Defense involved charges of Communist Party membership (Tr. 267, 306–307; R. 37). Petitioner grew out of a committee organized in 1932 to handle the Inter-

national Labor Defense's legal work in deportation cases (Tr. 262; R. 37). The Labor Defense was to continue to handle the mass demonstrations concerning these cases (Tr. 265; R. 37).

The local committees of petitioner were not organized until considerably later. Barbara Hartle testified that at the meetings in 1948 and 1949 of the Party's North-West District Committee and Board, which led to the formation of petitioner's North-West Committee, the functions of such a branch were seen as defending Party members threatened with deportation and attracting persons interested in problems of the foreign born to support Communist Party positions (Tr. 1581–1583; R. 36). Clark Harper, another former Party member, testified that Henry Huff, the leader of the Party's North-West District, stated that a branch of the American Committee was needed to protect "our foreign born comrades" and help build the Party (Tr. 2977; R. 36). As we have noted (p. 11), these discussions resulted in instructions to a Party member to organize a local committee of petitioners, which she did successfully.

Bernice Baldwin, a member of the Communist Party who had been assigned to represent it at petitioner's national conference in 1949, testified that the Michigan Committee of petitioner was established to relieve the Civil Rights Congress of the burden of defending foreign-born Party members (Tr. 1536–1537; R. 38). James W. Glatis, who was assigned by the Party to work in Communist-front groups secretly rather than openly as a Party member, attended the

meeting which began the New England Committee (Tr. 733, 743–754, R. 38–39).[9] He testified that the latter committee was formed to defend in deportation hearings members of organizations dedicated to overthrow of the government by force and violence (Tr. 7774; R. 39).

John Lautner, who was a leading member of the Communist Party and was on petitioner's Executive Committee, explained that the American Committee "functioned to give legal aid and legal protection for members of the Communist Party, and particularly leaders of the Communist Party," and that its leaders "carried out Party policies * * * into the functions of their own organization" (Tr. 1004, 1005; R. 39, 40). Mary Markward testified that Dorothy Strange, a Party member and an officer of the American Committee, told her that her (Miss Strange's) work for petitioner was just as important to the cause of Communism and the Party as any work being done by a "functionary" of the Party (Tr. 3760–3763; R. 41).

The Board concluded (R. 36):

> The record shows that the Communist party of the United States has had a continuing policy toward the foreign born. The aims and purposes of the Party have been: (a) to seek to prevent the denaturalization and deportation of officers and members of the Party, and (b)

[9] Apparently, the New England Committee was not successful at the beginning since, after the meeting attended by Glatis in 1950, a second "founding" meeting was held in 1952 (Tr. 4077–4078, 4084, 4086, 6955–6956, 6559–6560, 6962). Glatis did not attend the 1952 meeting but did attend meetings of the local committee in 1953 and 1954 (Tr. 762–771).

> to win the goodwill of the foreign born and obtain from them adherents to aid support for the Party and for Party programs. The record also shows that it was the policy of the Communist Party to carry out and advance these aims and purposes through and by an organization separate from and not a part of the Communist Party as such.

Petitioner's major activities have been the defense of foreign-born persons in deportation and denaturalization cases and efforts to have legislation in this area repealed or amended. While petitioner has defended many persons not charged with membership in the Communist Party, a large part, if not a majority, of the cases in which it participated, did involve Party membership. For example, it defended such Party leaders as Alexander Bittelman, Jack Stachel, John Williamson, Betty Gannett, additional members of the Party's national committee, and numerous other Party members (Tr. 1050–1053; A.G. Exs. 16, 19; R. 59–60). Petitioner defended Gerhart Eisler not only in deportation proceedings but when he was charged with contempt of Congress (A.G. Ex. 202; R. 43–44).

Four senior Immigration and Naturalization officers testified that of the 200 or more persons named by petitioner as threatened with deportation in a leaflet issued in 1950 (A.G. Ex. 19), a large proportion were charged with Party membership or subversive activities (Tr. 3394–3675, 3776–3855). Petitioner states (Pet. 8, note 6) that it has litigated 20 cases in this Court. Of the 20, all but two involved charges of Party membership, membership in an or-

ganization advocating violent overthrow of the government, or similar activity. Petitioner also has worked for the repeal of all statutes providing for deportation of aliens because of membership in the Communist Party (A.G. Exs. 25, 218, 236, 243, 244; P. Ex. 191; R. 58). Green testified on direct examination that in 20 years the Committee participated in four to five thousand deportation proceedings and out of that number "about 350 or 400" involved charges of Party membership or membership in another organization advocating the violent overthrow of the government (Tr. 6112–6113). On cross-examination, he testified that between 1948 and 1950 the committee participated in more than 200 cases each year which he termed "political" (Tr. 6721, 6742).[10]

Lautner testified that petitioner's defense of persons who were not members of the Communist Party was not incompatible with operating as a Party defense organization (Tr. 1139; R. 57). He stated that this would be useful since it "would add to the prestige of the organization" (Tr. 1139; R. 57). Moreover, the Party publicized the fact that a purportedly non-Party organization was defending Party members and vigorously attacked their "harassment" by the government (A.G. Ex. 124, 127, 138; R. 63–64).

In addition, petitioner actively worked for the repeal of statutes providing for the deportation of Party members (*e.g.*, A.G. Exs. 25, 218, 236, 243, 244;

[10] Green testified that the figures he gave included cases carried over from one year to the next (Tr. 6721). Apparently his figures included cases handled by local committees, such as the Mid-West Committee (Tr. 6596).

P. Ex. 191; R. 58). It also engaged in campaigns on issues having no direct bearing on the foreign born. For example, in 1953, petitioner circulated a booklet written by Green in which he referred to the "rotten frameup of the Rosenbergs" as caused by anti-Semitism (P. Ex. 191, p. 47; R. 46). Petitioner published articles or booklets strongly attacking the prosecution of Communist leaders under the Taft-Hartley and Smith Acts and calling for their repeal (A.G. Ex. 169, 191 (p. 47), 279 (p. 3); P. Ex. 291 (p. 47); R. 44–47).

The Board found that the evidence indicated that of the cases handled by the American Committee over 50 percent involved allegations of past or present Party membership (R. 58). The Board concluded that (R. 60):

> A substantial part of respondent's resources, time and efforts have been devoted to campaigns directed at the elimination of all provisions of the laws under which alien members and officers of the Communist Party are deportable, to the legal and propaganda defense of such persons when they have been actually involved in deportation proceedings, and to instigating protests against Government officials when deportation charges have been brought against Communists. Respondent has consistently and strongly sought funds from the public with which to carry out its activities and has sought to win the good will of the foreign born. Obviously these activities, particularly in opposing the laws and working to prevent the deportation of Communists, constitute aid to the Communist Party.

Furthermore, the Board found, the Party was able to "capitaliz[e] on and us[e petitioner's] activities, such as the defense of Party leaders in deportation proceedings, to the advantage of the Party" (R. 63). It further concluded that petitioner outside the field of the foreign born "as well as in its views and policies in the field of the foreign born * * * has paralleled the views and policies of the Communist Party and has not in any instance deviated therefrom. We find that the clear preponderance of the evidence establishes that the purposes of [petitioner] have been to aid and support the Communist Party" (R. 53).

Petitioner's control by, and aid to, the Party is reflected in the Party's reciprocal aid. While petitioner's main source of financial support seems to have been contributions from the general public and from organizations whose members had problems under the immigration and naturalization laws, petitioner also received financial assistance from the Communist Party (Tr. 6235–6237; A.G. Ex. 150–C; R. 61). In addition, the Party circulated petitioner's literature, sold tickets to its affairs, gave it favorable publicity in the Party press, and told Party members to contribute to it financially, attend its meetings, and aid its programs (Tr. 357–358, 761, 776–778, 972, 1001–1002, 1601, 2986–2987; A.G. Exs. 89, 132; R. 61, 62–63). For example, a report at the Party's national convention in 1951 stated that petitioner "performs invaluable service in the fight against the government's deportation drive" and said "all progressives," *i.e.*, Party members, should "help raise funds, and support [its] work" (A.G. Ex.

229, p. 127; R. 40). William Z. Foster, the Party's leader, likewise wrote an article published in *Political Affairs,* an official Party journal, stating that "progressives" had the duty to raise funds for petitioner (A.G. Ex. 229; R. 60, note 1). In addition, as stated above (pp. 6, 11, 14), the Party selected the officials to head petitioner itself and at least one of its branches and participated in the organization of branches.

The Board determined that there was "a definite policy on the part of the Communist Party fully to support" petitioner and that this policy resulted in "a consistent pattern of Party support of [petitioner] and aid in [petitioner's] activities" (R. 60, 61; see also R. 64).

In conclusion, the Board found that (R. 66):

> [Petitioner] has been and is (i) substantially directed, dominated or controlled by the Communist Party, a Communist-action organization, * * * and (ii) primarily operated for the purpose of giving aid and support to such Communist-action organization.

SUMMARY OF ARGUMENT

This case involves the provisions of the Subversive Activities Control Act which give the Subversive Activities Control Board the responsibility of determining whether organizations are Communist fronts and which require organizations so found to register, disclose the names of their officers (but not members), and give a financial accounting. The Act defines a Communist front as an organization controlled by, and operating primarily to give aid

and support to, a Communist-action organization (Section 3(4))—in this case, the Communist Party. As a consequence of this definition and that of a Communist-action organization in the Act (Section 3(3)). Communist fronts are by definition controlled by the world Communist movement. Thus, Communist fronts are in effect subsidiaries of Communist-action organizations which in turn are subsidiaries of the integrated and disciplined world Communist movement.

I

The court below correctly sustained the Board's ultimate factual finding that petitioner is a Communist-front organization as defined in the Act.

A. Administrative agencies have considerable discretion in construing the Act they are charged with administering. *E.g., National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111. The determinations of such agencies are entitled to even greater weight as to findings of fact, the credibility of witnesses, and the admissibility of evidence. Moreover, Congress charged the courts of appeals with primary responsibility for ascertaining that the findings of administrative agencies are sufficiently supported. See *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498. All these well-established principles were specifically applied to this Act by the Court in *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 28–29, 69, 130–131.

The Board found, on the basis of ample evidence, that petitioner is a Communist-front organization. It presented the grounds of this finding, and the subsidi-

ary findings on which it rests, in an exhaustive report. The court below, in discharge of its statutory obligation, determined that the Board's conclusion was supported by the evidence after a painstaking review of the entire record. In these circumstances, there is no occasion for this Court to subject the lengthy transcript to a second judicial review for the purpose of reappraising and re-evaluating the evidence. The Court need do no more than satisfy itself that the court below made a fair assessment of the record on the issue of sufficiency of the evidence. That the court below did so is evident from its opinion. Moreover, most of petitioner's contentions to the contrary are little more than quibbles which, even if correct, would not justify overturning the decision below.

B. The record shows that the Board's finding that petitioner is controlled by the Communist Party is supported by the evidence. The record shows that petitioner arose out of a Communist organization, that petitioner, as well as the local committees which were shown to be a part of it, were run by members of the Communist Party, that petitioner's principal officer was chosen for this position by the Party, and that petitioner's officers carried out Party policies within petitioner. While much of the evidence relates to events prior to the passage of the Act in 1950, the Board was entitled to consider this information as bearing on petitioner's present character. *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 69; *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 703–706. There was no evi-

dence that the Party's relationship to petitioner changed after 1950; indeed, the evidence showed the continuation of the close relationship.

C. 1. Petitioner's principal non-constitutional contention is that the aid component of the Act's definition of a Communist-front organization requires proof that the alleged front operates primarily to give aid and support to forcible overthrow of the government. However, Section 3(4) imposes no such requirement; it merely requires a showing that the organization is primarily operated for the purpose of giving aid and support to a Communist-action organization. Moreover, Section 2(7) of the Act describes Communist fronts as concealing their Communist relationships in order to attract non-Communist support. This finding is supported by the theory and history of Communist fronts here and elsewhere in the world. Obviously, then, Communist fronts by their very nature cannot and do not advocate forcible overthrow. Thus, if, as petitioner contends, the government must show that the alleged front advocated forcible overthrow, the front provisions of the Act will be stripped of all meaning.

On the other hand, the Board's interpretation of the Act does not mean that organizations which happen to support causes which the Communist Party also supports must register. For the Act requires proof of control by a Communist-action organization and the purpose of operating to support it.

B. The evidence before the Board supports its conclusion that petitioner operated both in purpose and in actual effect primarily to give aid and support to

the Communist Party. Petitioner arose from an organization which was designed to aid the Communist Party in several ways including defending persons arrested in working class activity and recruiting Party members. Petitioner has itself defended large numbers of Party officers and members in deportation cases, supported Party positions concerning statutes aimed at the Communist Party, and served as a source for recruiting Party members. The evidence showed that in carrying out these activities, petitioner was deliberately following Party policies.

While petitioner also defended many non-Communists, the record shows that this too served Communist purposes by allowing petitioner to pose as a non-Communist organization interested only in protecting the civil liberties of the foreign born. As a result, petitioner was in the position of being able to attract the non-Communist support essential to give numerical weight to petitioner's support of Party positions, to provide financial aid, and, after their gradual indoctrination of its supporters, to be a source for new Party members.

D. Section 3(2) of the Act defines "organization" to include an "association" or "a group of persons * * * associated together for joint action on any subject." Since Section 3(1) defines "person" as including "an organization," an "organization" under the Act may include various sub-groups.

The evidence showed that the local Committees for Protection of Foreign Born worked intimately with the national committee and were considered by the national committee to be part of the same organiza-

tion. Thus, the Board was correct in holding that local committees were part of the same organization as the national committee within the meaning of the Act.

E. The hearing examiner's refusal to allow petitioner to ask witness Lautner where he lived was well within the examiner's broad discretion in determining the scope of proper cross-examination. It was also within the discretion of the Board, assuming the question should have been allowed, to refuse to strike the witness' testimony because of this one question during the lengthy cross-examination of this witness. *Alford v. United States,* 282 U.S. 687, upon which petitioner relies, involved a criminal trial and circumstances making the question of the witness' residence considerably more material than was the case here.

II

The provisions of the Act which are involved in this case have two separate parts. First, the Board is charged with determining whether organizations are Communist fronts. Second, the Act requires any organization found to be a front to register, disclose the names of its officers, and give a financial accounting. Since it is clear that Congress intended that the first function of the Act should continue whether or not registration and disclosure could be effectuated, the two parts of the Act must be considered separately.

A. The authority of the Board to determine whether organizations are Communist fronts is clearly consti-

tutional. This Court has never even suggested that the First Amendment bars the government from finding and promulgating facts which are being concealed in order to deceive the public, where, as here, fair procedures are provided. Indeed, in *Viereck* v. *United States*, 318 U.S. 236, 251, Mr. Justice Black, in dissenting on other grounds, stated that government publication of such information "implements rather than detracts from the prized freedoms guaranteed by the First Amendment." And in the *Communist Party* case, not only the majority but two of the dissenters agreed that the Board's determination concerning the character of the Communist Party was constitutional. 367 U.S. at 174–175, 191.

As to the Fifth Amendment, no issue is even raised insofar as the Act only gives the Board the power to determine the character of organizations.

B. The registration and disclosure provisions of the Act are also constitutional.

1. The *Communist Party* case is controlling that these provisions do not violate the First Amendment. There, this Court upheld, with two of the dissenters agreeing, these same provisions of the Act as applied to Communist-action organizations against attack based on the First Amendment. 367 U.S. at 88–103, 174–175, 191. Since petitioner is, by definition and as shown by the record, in effect a subsidiary of the Communist Party, there is no basis for distinguishing this case. Indeed, the constitutionality of the disclosure provisions as applied to Communist fronts is, if anything, clearer since they do not require disclosure of the organization's members.

Secondly, independently of the *Communist Party* case, the First Amendment does not prohibit Congress from requiring registration of, and disclosure of information by, domestic organizations which are indirectly but clearly dominated by foreign agencies whose purpose it is to establish a Communist dictatorship in this country. The freedoms guaranteed by the First Amendment are not absolute. Even direct limitations on those freedoms may be permissible where clearly necessary to the effectuation by Congress of an end within its power to bring about. *A fortiori,* those freedoms may be indirectly restrained in proper circumstances.

This Court has many times sustained disclosure statutes which placed indirect restraints on freedom of speech or of the press, where the statute's objective lay within the power of Congress or a state to bring about, and the restraint was a necessary and appropriate concomitant of the exercise of the power. Examples are the Hatch Act (*United Public Workers* v. *Mitchell,* 330 U.S. 75), the Federal Regulation of Lobbying Act (*United States* v. *Harriss,* 347 U.S. 612), and the Federal Corrupt Practices Act (*Burroughs* v. *United States,* 290 U.S. 534).

The various evils at which the statutes thus sustained were aimed, grave as they were, are dwarfed in comparison to the evil at which the Act at bar strikes—the threatened destruction of our constitutional form of government and the subjection of the nation to the domination and control of a foreign dictatorship. Indeed, this Court has repeatedly recog-

nized the great seriousness of the evil and, because of its conspiratorial nature and avowal of illegal means, has refused to treat the Communist Party as an ordinary political party. *E.g., Galvan* v. *Press,* 347 U.S. 522; *Barenblatt* v. *United States;* 360 U.S. 109. While Communist fronts, unlike the Communist Party, do not directly advocate forcible overthrow, they are designed to make a significant contribution to this ultimate result. They support various Communist positions, provide sources for the recruitment of new Party members, and give financial, legal, and other support to the Party itself.

In the light of the evil involved, the registration requirements do not invalidly restrict free speech, press, or association. The rationale underlying this Court's decisions sustaining "disclosure" statutes is that it is in the interest of both free speech and free association that Congress and the public be adequately and correctly informed, at least where the dangers stemming from non-disclosure are serious. The device of registration and disclosure is therefore a reasonable measure to be applied to a subsidiary of the Communist Party, now that the Party has been found, after full hearing, to be directed and controlled by the Soviet Union and to be operating primarily to advance the objectives of the world Communist movement.

Petitioner contends that all it does is to pursue legitimate objectives, such as defending aliens and promoting changes in the immigration laws and therefore cannot be ordered to register. But this is not why petitioner comes within the Act. It must register

because it is controlled by, and operated primarily to give aid and support to, the Communist Party regardless what form its activities may take.

2. The definition of Communist-front organizations in the Act is not unconstitutionally vague under the First Amendment or the due process clause of the Fifth Amendment. This Court upheld a similar definition applicable to Communist-action organizations in the *Communist Party* case. 367 U.S. at 71, 82, 115. Unlike in *Cramp* v. *Board of Public Instruction,* 368 U.S. 278, and *Baggett* v. *Bullitt,* 377 U.S. 360, upon which petitioner relies, this is only a regulatory statute not involving the threat of criminal prosecution for past activities. Moreover, unlike in those cases, the Act here cannot possibly apply to mere incidental and innocent aid to the Communist Party.

The *amicus curiae* also claims that the evidentiary criteria in Section 13(f) are unconstitutionally vague. However, a new issue may not be injected into a case for the first time in this Court by an organization which is not a party. Moreover, this Court rejected a similar contention in the *Communist Party* case. 367 U.S. at 115. And finally, Section 13(f) merely states the kind of evidence the Board should consider; the exclusive test is in Section 3(4). Congress may provide in general terms concerning the kinds of evidence which an administrative agency should consider. *E.g., Opp Cotton Mills* v. *Administrator,* 312 U.S. 125.

3. Petitioner was not denied procedural due process because it was not allowed to relitigate whether the Communist Party is a Communist-action organization.

Since petitioner was found to be controlled by the Communist Party, the Party can be fairly said to have represented petitioner in the litigation resulting in the Party's final order to register. See *Hansberry* v. *Lee*, 311 U.S. 32, 42–43. The Party can relitigate its status at any time it chooses to register, under a provision which this Court has termed an "adequate means of relief." *Communist Party* v. *Subversive Activities Control Board, supra*, 367 U.S. at 87. If there were any constitutional unfairness in not allowing relitigation without the Party's registering, it is the Party, and not petitioner, which may claim denial of its rights.

4. The Board's definition of "organization" did not violate the First Amendment or the due process clause of the Fifth Amendment. First, this issue is not properly before the Court since it was not raised in the petition for a writ of certiorari. Second, no liability is being imposed on the national committee merely for associating with the local committees. The Board had ample evidence to find, as it did, that the national and local committees were part of a single organization.

5. The registration and disclosure provisions do not violate the self-incrimination clause of the Fifth Amendment.

a. This issue may not be raised here since it was not raised in the court below.

b. This Court held in the *Communist Party* case that a directly analogous issue relating to registration of a Communist-action organization was premature. 367 U.S. at 105–110.

c. Independent of the *Communist Party* case, it is clear that the self-incrimination issue is premature. First, the privilege applies only to natural individuals (*United States* v. *White,* 322 U.S. 694, 698), of whom there is none before the Court at this time. Second, the privilege must be personally and explicitly claimed (*e.g., Quinn* v. *United States,* 349 U.S. 155, 162) and there has been no claim of privilege thus far, and there may never be one. Third, it cannot justifiably be assumed at this time that a claim of privilege will inevitably be made, particularly since the Act requires disclosure only of the names of petitioner's officers and not members. Fourth, even assuming that a claim of privilege will be made and that, when made, it will be sustained this would make the order to register at most unenforceable, not void. Congress could remove the barrier to non-enforceability by a grant of immunity; and, in any event non-enforceability would not affect the disabilities which come into effect when an order to register becomes final.

d. If the Court decides that the issue is not premature, the privilege is not available to petitioner's officers. First, this Court held in *United States* v. *White,* 322 U.S. 694, that an officer of an organization who has custody of its records, if called upon to produce them pursuant to a subpoena, may not lawfully refuse even if they would tend to incriminate him personally. The rationale of this decision is not inapplicable on the ground that in that case physical records were in question, while the issue here is the compulsory submission of a registration statement containing the name of officers and a financial account-

ing. For this Court has held that officers may be required to file reports with administrative agencies even though this may incriminate them personally. *Baltimore & Ohio Railroad* v. *Interstate Commerce Commission,* 221 U.S. 612. The data required to be contained in the registration statement are reproductions of or extracts from organization records. Any valid privilege as to personal information can be claimed on the registration form. See *United States* v. *Sullivan,* 274 U.S. 259.

Second, even if an officer could invoke the privilege as to an organization's records, it is very likely that the claim would not be valid as to all petitioner's officers. The privilege presupposes a real danger of legal detriment arising from disclosure. *Rogers* v. *United States,* 340 U.S. 367. Here, Section 4(f) of the Act provides that the registration of any person under the Act may not be received in evidence against him in any criminal prosecution. There is no realistic possibility that registration would provide any leads to other evidence since petitioner has made no secret of at least many of its officers. But, in any event, a party under an obligation to perform a legal obligation has a duty to find someone to perform this obligation. It cannot be assumed that no attorney or other agent will be available.

ARGUMENT

INTRODUCTION

The heart of the Subversive Activities Control Act [11] is the requirement that the Subversive Activities

[11] The Act is analyzed in detail in Appendix A below.

Control Board determine whether organizations are Communist-action and Communist-front organizations as defined in the Act and, if they are found to be, that they should register with the Attorney General, should disclose the names of their officers and, in the case of Communist-action organizations, of their members, and should give financial accountings. A Communist-front organization is defined as any organization in the United States which is substantially dominated or controlled by, *and* which primarily operates to give aid and support to, a Communist-action organization (Section 3(4)). A Communist-action organization, in turn, is defined as an organization which is substantially dominated or controlled by "the foreign government or foreign organization controlling the world Communist movement" *and* which "operates primarily to advance the objectives" of that movement (Section 3(3)). The "world Communist movement" is that "world-wide revolutionary movement," whose purpose Congress found in Section 2 "is, by treachery, deceit, infiltration into the other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries hroughout the world through the medium of a world-wide Communist organization."

A Communist-front organization then, by definition, is controlled by the world Communist movement, indirectly but just as surely, as Communist-action organizations themselves. Moreover, Congress has explicitly found that Communist-action organizations

secretly operate to a substantial extent through Communist-front organizations in order to obtain support from persons who would not knowingly support Communist causes (Section 2(7)). Thus, to borrow an analogy from the field of corporations, Communist fronts are subsidiaries of Communist-action organizations, *i.e.*, the various Communist parties, which are subsidiaries of a world-wide holding company, *i.e.*, the world Communist movement. Congress was attempting in the Act to deal with the danger of this unified and disciplined movement as a whole.

Congress' determination to deal with Communist-front, as well as Communist-action, organizations is amply supported by the theory and use of Communist fronts.[12] After the Soviet Revolution, it soon became clear that Communist ideology would not quickly win the support of the workers of Europe and that other revolutions would not automatically occur. As a result, the world Communist movement decided to subvert existing worker, farmer, and other organizations and to start new organizations which would support Communist positions. This the Party has done not only in Europe but also in the United States in order to prepare the way for ultimate overthrow of the government by force if necessary.

The fronts have served several purposes for which Communist parties were inadequate. Since the front organizations could purport to be non-Communist, they made Communist views seem respectable to per-

[12] For a detailed history of the theory and use of Communist-front organizations, see Appendices B and C below.

sons outside the fronts who would not normally be receptive to Communism. For example, the fronts have attempted to arouse support for Soviet foreign policy such as the Soviet peace offensive after World War II. The fronts have also been sources for the recruitment of Party members since constant propaganda made members of the fronts increasingly receptive to Communist ideology. Finally, the fronts have served the Communist movement by collecting funds for it from non-Communists or by providing some service for the movement such as the legal defense of Party members, again largely at the expense of non-Communists.

The Board found that the Communist Party was a Communist-action organization and this finding was upheld by this Court. *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1. In this proceeding, the Board found that petitioner was controlled by, and primarily operated to give aid and support to, the Communist Party and therefore was a Communist front under the Act. The Board's subsidiary findings demonstrate that petitioner is a typical front. It conceals its Communist control and purposes so as to attract non-Communist members. It vigorously supports Communist causes as if it were an independent organization in order to gain sympathy for Communism and to convert its own members to acceptance of Communism as such. And it directly supports the Communist movement by defending Communist leaders and members from deportation with funds largely obtained from non-Communist sources.

755-587—64——4

As we shall show, the record fully supports these findings, and they, in turn, support the Board's ultimate conclusion that petitioner is a Communist front. But before discussing either these findings or the other grounds, statutory and constitutional, upon which petitioner challenges the Board's order, we think it would be helpful, in order to put the issues in proper context, to discuss the background of the Act, both generally and with respect to the particular provisions relating to Communist fronts.

I

THE BACKGROUND OF THE SUBVERSIVE ACTIVITIES CONTROL ACT

A. THE HISTORICAL BACKGROUND OF THE ACT

Just as an examination of the problem or evil which evoked the passage of legislation is a sound guide to its purposes and meaning (*Holy Trinity Church* v. *United States,* 143 U.S. 457, 463–465; *Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, 489–493), so too a fair appreciation of the nature of the problem which led to the enactment of a statute is indispensable to proper evaluation of the soundness of challenges to its constitutionality. Cf. *American Communications Assn.* v. *Douds,* 339 U.S. 382, 388–389; *Dennis* v. *United States,* 341 U.S. 494, 562–566 (Mr. Justice Jackson, concurring). Consideration of the problems which called the legislation involved here into being will tend to show, we believe, the reasonableness of the basic scheme of the Act, particularly as applied to petitioner, and thus to refute the contention that it arbitrarily invades basic constitutional liberties.

Rarely has there been a more intense study of methods of dealing with a particular evil than that which preceded and produced the Subversive Activities Control Act of 1950.[18]

Following World War I, the powerful totalitarian political movements of Communism, National Socialism, and Fascism developed in Russia, Germany, and Italy. The success of the so-called Fifth-Column groups in Europe during the 1930's indicated the vulnerability of republican forms of government to conspiracies guided from outside the country involved, ready to seize total power by illegal means as soon as the time became propitious. See Loewenstein, *Legislative Control of Political Extremism in European Democracies,* 38 Colum. L. Rev. 591–622, 725-744. By 1940 it was clear that these highly organized and disciplined totalitarian movements, financed and directed from abroad and promoted domestically by secret dedicated action-groups, involved much greater danger to the democracies than had earlier individual exponents of political violence. The danger became one, not of ideas and philosophies, but of external aggression aided by local covert groups serving the aggressive aims of their foreign principals.

As early as 1930, investigations were conducted by Congressional committees into Communist propaganda and activities in the United States and considerable testimony directed to this issue was adduced

[18] There is a more detailed discussion of much of this material in the government's brief in this Court in *Dennis* v. *United States*, Oct. Term 1950, No. 336, pp. 174; *et seq.*

in various cities of the United States. See *Internal Security Manual,* Sen. Doc. No. 47, 83d Cong., 1st Sess. (1953) 216–217. In 1934, the investigation was extended to Nazi propaganda activities. *Id.* at 217–218. During the years 1930 to 1940, it was shown that the alien political philosophies of the right and left had created divided loyalties in this country. For example, William Z. Foster, the leader of the Communist Party of the United States, testified in 1931 that the "more advanced workers" in this country "look upon the Soviet Union as their country." Hearings before a House Special Committee To Investigate Communist Activities in the United States, 71st Cong., 2d Sess., part I, vol. 4, p. 384.

Also significant were the 1939 hearings before the House Committee on Un-American Activities, in which the testimony of such witnesses as Benjamin Gitlow and Earl Browder, as well as a mass of documentary evidence, tended to show the subservience of the American Communist Party to the Soviet Union. Hearings before a House Special Committee on Un-American Activities, 76th Cong., 1st Sess., vol. 7, *passim.* Congress had before it the *Theses, Statutes, and Conditions of Admission to the Third (Communist) International,* adopted at the Second World Congress of the Communist International in 1920. *Id.,* vol. 7, pp. 4668–4671. Among the "conditions" which a party aspiring to join the International was required to accept were: willingness to combine illegal with legal work to advance the objective of a world proletarian dictatorship (condition 3); willingness to infiltrate and carry on propaganda and agitation in military

organizations (condition 4); renunciation of "social patriotism," and systematic demonstration to the working class of the necessity of a "revolutionary overthrow of capitalism" (condition 6); recognition of the necessity of "complete and absolute rupture with reformism and the policy of the 'centrists'" (condition 7); willingness to carry on "systematic and persistent Communist work in the labor unions" and to form "Communist nuclei" within unions to the end that they should be "[won] over * * * to Communism" (condition 9); the maintenance of "iron discipline" on the basis of the "principle of democratic centralization" to the end that the "party centre" may enjoy "the confidence of the party membership" and be "endowed with complete power" over it (condition 12); recognition of the "binding" force of all resolutions of congresses of the Communist International and of its Executive Committee on "all parties joining the Communist International" (condition 16); and exclusion from the party of all members who "reject in principle the conditions and theses" (condition 21).

Congress was informed that these "conditions" governed the relationship between the American Communist Party and the International. Hearings before a House Special Committee on Un-American Activities, 76th Cong., 1st Sess., vol. 7, pp. 4308–4311, 4667–4668. For example, in 1929, the Executive Committee of the International, under the personal leadership of Stalin and Molotov, decided upon and enforced the replacement of the Lovestone-Gitlow leadership of the American Party by that of Foster and Browder.

When Lovestone and Gitlow defied the Executive Committee, Stalin made a speech reminding them of the fate of Trotsky and Zinoviev (*id.* at 4432),[14] and the Party's organ, the *Daily Worker,* stated editorially on June 1, 1929, that (*id.* at 4671):

> Comrades Lovestone and Gitlow in their declaration of May 14 refused to accept the address or to carry it out, and even went to the length of stating that they would actively oppose it. They are thus entering upon a course leading toward an attempt to split the party, a course in violation of the 21 conditions and the statutes of the Comintern.

Thus, by 1939, there was a mass of oral and documentary evidence collected by the House Committee on Un-American Activities over the previous nine years, which demonstrated that both the Communist International and the Communist Party of the United States were devoted to the establishment of a proletarian dictatorship by force and violence, and that the American Communist Party was completely controlled both as to policy and leadership by the Soviet Union through the Communist International. See *Internal Security Manual,* Sen. Doc. No. 47, 83d Cong., 1st Sess. 216–219; see also H. Rep. No. 153, 74th Cong., 1st Sess. 21.

Congress endeavored to deal with this problem in several ways. In the portion of the Alien Registration Act of 1940, 54 Stat. 670, known as the Smith

[14] The full text of this speech is set forth in the Appendix to the Hearings before a House Special Committee to Investigate Communist Activities in the United States, 71st Cong., 2d Sess., part I, pp. 876–882.

Act—*i.e.*, Sections 2, 3, and 5 (now consolidated in 18 U.S.C. 2385)—it was made a criminal offense to advocate the overthrow of the Government by force and violence or to conspire so to advocate.[15] The problem of the dissemination of foreign propaganda was approached by the method of disclosure. In 1938, Congress enacted the Foreign Agents Registration Act, 52 Stat. 631, 22 U.S.C. 611-621, requiring the registration of any individual or organization acting as the domestic agent of a foreign principal and requiring information as to the identity of the principal and the terms of the contract. The committee reports on the bill which became that Act both stated as follows (H. Rep. No. 1381, 75th Cong., 1st Sess. 1-2; S. Rep. No. 1783, 75th Cong., 3d Sess. 1-2):

> Incontrovertible evidence has been submitted to prove that there are many persons in the United States representing foreign governments or foreign political groups, who are supplied by such foreign agencies with funds and other materials to foster un-American activities, and to influence the external and internal policies of this country, thereby violating both the letter and the spirit of international law, as well as the democratic basis of our own American institutions of government.
>
> * * * * *

[15] The constitutionality of this provision, as applied to a conspiracy charge against eleven of the Party's national officers for the period from April 1, 1945, to July 20, 1948, was upheld in *Dennis* v. *United States*, 341 U.S. 494. The membership clause was held constitutional in *Scales* v. *United States*, 367 U.S. 203.

> This required registration will publicize the nature of subversive or other similar activities of such foreign propagandists, so that the American people may know those who are engaged in this country by foreign agencies to spread doctrines alien to our democratic form of government, or propaganda for the purpose of influencing American public opinion on a political question.
>
> * * * * *
>
> We believe that the spotlight of pitiless publicity will serve as a deterrent ot the spread of pernicious propaganda. We feel that our people are entitled to know the sources of any such efforts, and the person or persons or agencies carrying on such work in the United States.

Various difficulties in the enforcement of the Foreign Agents Registration Act (see Report of the Institute of Living Law, 87 Cong. Rec. App. A4417–4419 (1941); Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Exposure*, 10 Univ. of Chi. L. Rev. 107) resulted in its amendment by the Act of April 29, 1942, 56 Stat. 258, which strengthened the provisions and transferred the administration of the Act from the Secretary of State to the Attorney General. The Reports of the Attorney General to Congress on the Administration of the Foreign Agents Registration Act (which are required by 22 U.S.C. 621) detail the operation of that statute.

The purpose of Congress to expose the foreign origin of various propaganda activities was, however, not fully achieved, partly because of an increased tendency to bring information services under the

aegis of diplomatic immunity (see Report of the Attorney General on the Administration of the Foreign Agents Registration Act, 1945–1949, p. 8; 1950 Report, pp. 5–6; 1951 Report, pp. 6–7), and partly because of controversy as to the scope of the "agency" covered by the statute. See *Viereck* v. *United States*, 318 U.S. 236, 242; *United States* v. *German American Vocational League*, 153 F. 2d 860, 864 (C.A. 3), certiorari denied, 328 U.S. 833; *United States* v. *Peace Information Center*, 97 F. Supp. 255, 258–259 (D. D.C.). The necessity of proving the fact of agency within the context of a criminal trial made difficult the enforcement of the Act against organizations which concealed their operations and obscured the sources and nature of their foreign control.

On October 17, 1940, Congress passed the so-called Voorhis Act, 54 Stat. 1201 (now 18 U.S.C. 2386), requiring the registration, *inter alia*, of any organization "subject to foreign control which engages in political activity." The House Committee on the Judiciary, in its report on the bill which became the Voorhis Act, said with respect to the purposes of the bill (H. Rep. No. 2582, 76th Cong., 3d Sess. 1):

> Freedom of political expression is a fundamental principle of democracy. A serious problem arises, however, where political organizations exist in a democracy which are substantially controlled or directed by a foreign power and seek to pursue a policy in a democracy like the United States for the benefit of that foreign power.
>
> * * * * *

> The principle upon which this bill is based is that there is no place in a democracy for undercover political organizations. Without in any way interfering with freedom of political activity, the passage of this legislation would mean that it would be unlawful for any political activities, inimical to the constitutional government, to be carried on, unless the full facts concerning such activities are made known.

It soon became apparent that there were also difficulties in the enforcement of the Voorhis Act. See Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Exposure,* 10 Univ. of Chi. L. Rev. 107, 122–133. Since religious, charitable, scientific, literary, and educational organizations were excluded from the Act's coverage, propaganda organizations could seek to avoid registration by styling themselves under one of the excluded categories. There was no express provision making the officers guilty if a corporation or association failed to register. In the case of a corporation or unincorporated association without funds for the payment of fines, there were no appropriate sanctions to enforce compliance. While it was originally anticipated that both the Communist Party and the German-American Bund would have to register under the Act (H. Rep. No. 2582, 76th Cong., 3d Sess. 2), the restricted meanings given to the terms "subject to foreign control" and "political activity" by the Act itself made avoidance of registration possible through the device of a claimed divorcement. For example, the Commu-

nist Party, at its 1940 convention, adopted a resolution which provided, *inter alia* (C.P. Ex. 13, p. 15):

> That the Communist Party of the U.S.A., in Convention assembled, does hereby cancel and dissolve its organizational affiliation to the Communist International, as well as any and all other bodies of any kind outside the boundaries of the United States of America, for the specific purpose of removing itself from the terms of the so-called Voorhis Act, which originated in the House of Representatives as H.R. 10094, which has been enacted and goes into effect in January 1941, which law would otherwise tend to destroy, and would destroy, the position of the Communist Party as a legal and open political party of the American working class * * *.

In addition, the Voorhis Act provided no adequate administrative machinery to search out the true facts regarding control of foreign dictatorships and the real objectives of domestic organizations believed to be subversive but which veiled their true ends behind a facade of respectability. That Act was addressed only to the formal, overt aspects of a particular group, and failed to reach the true but secret purposes which lay beneath the surface and which constituted the real threat to the security of the United States. See Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Suppression*, 37 Ill. (Northwestern Univ.) L. Rev. 193, 204–205; Cohen and Fuchs, *Communism's Challenge and the Constitution*, 34 Corn. L.Q. 182, 201. Indeed, the

Voorhis Act prompted the Party to hide its propaganda through the use of fronts. Moore, *The Communist Party of the USA: An Analysis of a Social Movement*, 39 Am. Pol. Sci. Rev. 31, 36–37.

After the cessation of hostilities in World War II, events occurred and facts were uncovered which tended to show more clearly the nature and dimensions of the danger. Communist regimes were established in several countries other than the Soviet Union, and elsewhere Communist parties attained considerable strength. The methods by which these regimes seized power—for example, in Czechoslovakia—were known and noted in this country.[16] Moreover, there came to light direct evidence of espionage in Canada, Great Britain, and the United States. In 1949, after a protracted trial, Eugene Dennis and ten other leaders of the Communist Party were found guilty of violating the Smith Act, and the evidence produced at the trial furnished further proof of the attitudes and actions of the Party's top ranks, and their relationship to the Soviet Union. The convictions were affirmed, with an exhaustive opinion by Judge Learned Hand, on August 1, 1950, 183 F. 2d 201 (C.A. 2), slightly less than two months before the final enactment of the Act involved here. This Court later affirmed the Second Circuit, without finding it necessary to review the sufficiency of the evidence. *Dennis* v. *United States*, 341 U.S. 494.

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[16] Some details of this history are set forth in the government's brief in *Dennis* v. *United States*, No. 336, Oct. Term 1950, pp. 199–203.

Thus, Congress had reason to believe, when it passed the Act in September 1950, that there remained in existence a world Communist movement which endangered the security of the United States.[17] This was the problem with which Congress undertook to deal in the Subversive Activities Control Act of 1950.

B. THE BACKGROUND OF THE COMMUNIST-FRONT PROVISIONS OF THE ACT

When Congress passed the Subversive Activities Control Act, it had considerable information concerning the important role of front organizations in Communist techniques.[18] William Green, the president of the American Federation of Labor, described the danger from Communist-front organizations before the House Committee on Un-American Activities (Hearings on H.R. 1884 and H.R. 2122, 80th Cong., 1st Sess. 48):

> The Communist Party of the United States has generally constituted but a small proportion of Communist activity in this country. The standard Communist technique is the technique of indirection and infiltration. Many organizations, sponsored by well-meaning but ill-informed men and women prominent in the community, the academic world, and even in church life, have been created for the sole purpose of providing a respectable front for fur-

[17] See, in addition to the materials referred to in the text, *The Strategy and Tactics of World Communism* (Report of the House Foreign Affairs Committee's Subcommittee No. 5 on National and International Movements), H. Doc. No. 619, 80th Cong., 2d Sess. 3-4.

[18] The history of Communist-front organizations both in the United States and in the rest of the world is described in some detail in Appendix B below.

thering Communist aims and purposes. Other organizations, completely non-Communist in origin, have been captured by Communists who, by infiltration, rigid discipline, and tireless persistence, would succeed in placing their candidates in key positions and eventually gain control.

These devious techniques and covert tactics make it plain that the task of combating communism is by no means simple. Communists are aware of the fact that the tenets of communism are repugnant to the vast majority of Americans. Hence their reliance on indirection and concealment and their constant endeavor to confuse and mislead. By changing their policy or "party line" at will, they have not hesitated to shift and even completely reverse their objectives overnight if that would gain them a temporary strategic advantage. If we are to reach to the roots of Communist penetration into the American community we must be ready to recognize the complex and intricate nature of the problem with which we are confronted.

J. Edgar Hoover likewise described Communist fronts (*id.*, part II, p. 41):

The united-front program of the Communist Party was launched at the seventh world congress of the Communist International in 1935. The Communist Party in the United States immediately took up the program and a systematic plan was worked out of infiltrating existing organizations with Communists.

For the most part, front organizations assumed the character of either a mass or membership organization or a paper organization.

> Both solicited and used names of prominent persons. Literally hundreds of groups and organizations have either been infiltrated or organized primarily to accomplish the purposes of promoting the interests of the Soviet Union in the United States, the promotion of Soviet war and peace aims, the exploitation of Negroes in the United States, work among foreign-language groups, and to secure a favorable viewpoint toward the Communists in domestic, political, social, and economic issues.
>
> The first requisite for front organizations is an idealistic sounding title. Hundreds of such organizations have come into being and have gone out of existence when their true purposes have become known or exposed while others with high-sounding names are continually springing up.
>
> * * * * *
>
> * * * I feel that this committee could render a great service to the Nation through its power of exposure in quickly spotlighting existing front organizations and those which will be created in the future.

Dr. Emerson Schmidt, representing the Chamber of Commerce, after testifying concerning the danger from Communist fronts (*id.*, part I, pp. 96–97), recommended (*id.* at 145):

> The Department of Justice should make public at least twice a year a certified list of Communist-controlled front organizations and labor unions.[19] * * *

[19] The Department of Justice did start to publicize such a list in 1947. [redacted] 341 U.S. 123. See p. 103 below.

The front organization should be clearly defined. Attorney General Francis A. Biddle has referred to them as organizations:

"Represented to the public for some legitimate reform objective, but actually used by the Communist Party to carry on its activities, pending the time when the Communists believe they can seize power through revolution."

Similarly, Donald Richberg, an attorney agreed with proposed legislation which would require Communist-front organizations to disclose their true purposes (Hearings on H.R. 4422 and H.R. 4581 before the Subcommittee on Legislation of the House Committee on Un-American Activities, 80th Cong., 2d Sess. 78):

A secret organization is really a characteristic of most of the so-called Communist front organizations. They appear to be open and aboveboard, but, as a matter of fact, the sources of their income [are] sometimes a bit uncertain; the sources of their policies and programs are uncertain. They are often left very vague, so that the people join with the notion that a broad statement of principles represents what this organization intends.

* * * * *

In other words, I think if you took a good deal of the secrecy out of these organizations you would reach a good deal of their harm.

It is my impression, just simply from people whom I know, that a considerable portion of the membership of the Communist front organizations is quite ignorant of the real purpose; they are befuddled.

* * * * *

> So that it seems to me this whole question of taking off the secrecy and shedding the light here would help meet the problem of the Communist front organizations, because it would very soon get to be either a Communist organization or no organization.

C. THE IMMEDIATE EVOLUTION OF THE ACT

The Subversive Activities Control Act was the final distillate, after more than two years of study, of a number of different bills. Efforts were made to remove objectionable features from early drafts and to define with precision the terms employed without leaving the remedial legislation vulnerable to the kind of calculated avoidance that had been the prime weakness of previous registration statutes.

The so-called "Mundt-Nixon" bill (H.R. 5852, 80th Cong., 2d Sess.) was introduced in the House and referred to the Committee on Un-American Activities on March 15, 1948. 94 Cong. Rec. 2893. As amended and reported out, Section 8 of the bill provided for registration with the Attorney General by "Communist political organizations" and "Communist-front organizations." The Attorney General was authorized under Section 13, either on his own initiative or at the request of either House of Congress, to make an investigation and conduct hearings to ascertain whether an organization was required to register.

In its report on the bill, the Committee cited the fact that the Foreign Agents Registration Act of 1938 and the Voorhis Act of 1940, while "directed against both Nazis and Communists," had "proved ineffective

against the latter, due in part to the skill and deceit which the Communists have used in concealing their foreign ties." H. Rep. No. 1844, 80th Cong., 2d Sess., 5. It was also stated that, while the Alien Registration Act of 1940—*i.e.*, the Smith Act—made it a crime to advocate the overthrow of the Government of the United States by force and violence, and "[w]hile force and violence is without doubt a basic principle to which all Communist Party members subscribe, the present line of the Party, in order to evade existing legislation, is to avoid wherever possible the open advocacy of force and violence." *Ibid.* The report also indicated that ten years' investigation by the Committee had established (*id.* at 2):

> (1) That the Communist movement in the United States is foreign-controlled; (2) that its ultimate objective with respect to the United States is to overthrow our free American institutions in favor of a Communist totalitarian dictatorship to be controlled from abroad; (3) that its activities are carried on by secret and conspiratorial methods; and (4) that its activities, both because of the alarming march of Communist forces abroad and because of the scope and nature of Communist activities here in the United States, constitute an immediate and powerful threat to the security of the United States and to the American way of life.

The Senate Judiciary Committee, to which the House bill was referred, sought the advice of several prominent lawyers and the then Attorney General as to the constitutionality of the bill. See 94 Cong. Rec. 9028; Hearings on H.R. 5852 before the Senate Com-

mittee on the Judiciary, 80th Cong., 2d Sess. 415–488.[20] The principal objection of those who thought the bill had constitutional defects was that the bill used such terms as "Communist political organization" and "Communist-front organization" without adequately defining those terms, and therefore furnished the Attorney General with no definite legislative guide in determining whether an organization was required to register.

A new version of the bill was then prepared. See 94 Cong. Rec. 9028, 9029–9032. It more specifically defined in its Section 3 the terms "Communist political organization" and "Communist-front organization," and set forth in Section 7 the duty of such organizations to register with the Attorney General and to file annual reports. In place of the provision for an administrative determination by the Attorney General, the new bill (Sections 12, 13) provided for a Subversive Activities Board which was to make the determination as to whether a given organization was required to register, with further provision for judicial review of its determinations.

The redrafted bill—known as the "Mundt-Ferguson-Johnston" bill—was introduced in the First Session of the 81st Congress as S. 2311.[21] The opinions of various prominent attorneys were again solicited and the consensus appeared to be that the bill met the

[20] See also the analysis of the bill in Cohen and Fuchs, *Communism's Challenge and the Constitution*, 34 Corn. L. Q. 182–219, 352–375.

[21] S. 2311 evolved after extensive hearings before a subcommittee of the Senate Judiciary Committee from S. 1194 and S. 1196, which were originally introduced in the 81st Congress.

constitutional objections as to vagueness and at the same time avoided the weaknesses of prior legislation. S. Rep. No. 1358, 81st Cong., 2d Sess. 7, 16–17.

Both the House and Senate committee reports reemphasized the pressing need for bringing Communist organizations out in the open through the medium of registration requirements. H. Rep. No. 2980, 81st Cong., 2d Sess.; S. Rep. No. 2369, 81st Cong. 2d Sess.; S. Rep. No. 1358, 81st Cong., 2d Sess. The House committee report reiterated that prior legislation directed to this end had been ineffectual against the Communist Party itself, and cited the fact that 30 of the 70 major countries of the world had outlawed the Communist Party. H. Rep. No. 2980, 81st Cong., 2d Sess. 2. The report further noted, however, that the Committee had rejected proposals to outlaw the Communist Party or to make membership therein illegal *per se*.

The Internal Security Act, of which the Subversive Activities Control Act is a constituent part (Title I), was passed on September 23, 1950, over the President's veto.

II

THE BOARD CORRECTLY FOUND THAT PETITIONER IS A COMMUNIST-FRONT ORGANIZATION AS DEFINED IN THE ACT

Section 3(4) of the Act defines a Communist-front organization as any organization which is (1) "substantially directed, dominated, or controlled by a Communist-action organization" (the control component) and (2) "is primarily operated for the purpose of

giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement" (the aid component). The Board found, on the basis of a full hearing, that petitioner was controlled by, and primarily operated to give aid and support to, a Communist-action organization, *i.e.*, the Communist Party (R. 66).

Petitioner attacks this determination on three nonconstitutional grounds. First, it claims that the Board misconstrued the Act as to both the control and aid requirements. Second, it contends that the evidence is not sufficient to support the Board's findings. And third, it objects to the limitation of petitioner's cross-examination of a government witness. While most of petitioner's contentions are phrased as challenges to the Board's interpretation of the Act, the Board and petitioner disagree mainly about the evidence rather than about the interpretation of the Act. Moreover, most of these contentions involve trivial points which, whatever their merits, would not require overturning the Board's order and the decision of the court below.

A. THERE IS NO OCCASION FOR A SECOND JUDICIAL REVIEW OF THE BOARD'S FACTUAL FINDING THAT PETITIONER IS A COMMUNIST-FRONT ORGANIZATION

The evidence in this proceeding consists of some 7,000 typewritten pages of testimony from 27 witnesses and more than 281 exhibits presented by the government and 237 by petitioner (R. 16). Its presentation extended over some nine months. The exhibits consisted largely of copies of petitioner's offi-

cial publications. The oral testimony covered to a large extent activities of both petitioner and the Communist Party in which the witnesses participated or of which they otherwise had personal knowledge. Nine of the witnesses for the Attorney General were former members of the Communist Party; and several of them had also been active in petitioner.

On this evidence, the Board found that petitioner is a Communist-front organization as defined in the Act and, as such, required to register (R. 66). The Board explained the grounds of this determination in an exhaustive report (R. 15–66). The court of appeals remanded the case to the Board to allow petitioner to introduce evidence that the testimony of a witness for the government was false (R. 72). After hearing this evidence, the Board issued a new report on reconsideration which concluded that the witness' testimony was true and affirmed its earlier order (R. 72).

The court of appeals, applying particularly strict standards (R. 73–74) and making a thorough review of the evidence, concluded that the Board's findings were "well founded" and affirmed the Board's order (R. 71–84). It stated that there was ample evidence for the Board to find that petitioner's national organization was headed by members of the Communist Party; that the local committees were "associated together for joint action" with the national organization and therefore constituted a single "organization" as defined in the Act (Section 3(2)); that the local committees were run by Party members; and

that, consequently, petitioner was "substantially directed, dominated, or controlled by a Communist-action organization" Section 3(4) (A)). The court of appeals further concluded that the evidence fully supported the Board's finding that petitioner operated primarily to give aid and support to the Communist Party (Section 3(4)(B)).

Within broad limits, most of petitioner's non-constitutional arguments relate to matters which are largely within the discretion of the Subversive Activities Control Board. It is well established that the construction of the statute by the agency which administers it is entitled to considerable weight. See, *e.g., National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111. In the *Communist Party* case, this Court held that "[s]ince the determination that an organization is or is not a Communist-action organization is largely a matter of working out of legislative policy in multiform situations of potentially great variety, the 'construction' of the statute which ensues from its application to particular circumstances by the administrative agency charged with its enforcement is to be given weight by a reviewing court." 367 U.S. at 40–41.

We submit that the Board's findings of fact are entitled to even greater weight. *E.g., National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 587; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 271. Moreover, Section 14(a) of the Act provides that, where review of a Board order is sought:

> The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari. * * *.

Relying on a similar provision in the Taft-Hartley Act, this Court stated in *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502-503:

> The same considerations that should lead us to leave undisturbed, by denying certiorari, decisions of Courts of Appeals involving solely a fair assessment of a record on the issue of unsubstantiality, ought to lead us to do no more than decide that there was such a fair assessment when the case is here, as this is, on other legal issues.

This well-established principle was expressly applied to the Subversive Activities Control Act in the *Communist Party* case (367 U.S. at 69):

> We see no reason why still another court should independently reappraise the record. We have declined to do this in the case of other agencies as to whom reviewing power on the facts has been vested in the Courts of Appeals, and we find no purpose to be served in departing now from this settled policy of appellate review.

Finally, this Court also made clear in the *Communist Party* case that the Board has broad discretion to determine both the credibility of witnesses and the admissibility of evidence. In that case, the government by mistake failed during the proceedings before the Board to produce certain allegedly inconsistent statements previously made by a government witness.

When the statements were discovered, the witness could not be recalled for cross-examination on the basis of them since he was then too sick to testify. This Court refused to overrule the Board's determination not to strike the witness' testimony. The Court concluded that the weight to be given the testimony "can best be answered by those entrusted with ascertaining the fact; that is, the tribunal that conducts the hearing and passes judgment on the reliability of the witness in light of his total testimony and its relation to the [whole record]. Wide discretion would be left to a trial judge and not less must be left to an agency like the Board in a matter of this kind—a matter of adjusting the process of inquiry to the exigencies of a particular situation as they appear to administrators immediately acquainted with the course of proceedings." 367 U.S. at 28-29.

In short, there is no occasion for this Court to repeat the scrutiny given the lengthy transcript and numerous exhibits by the court below for the purpose of reappraising and re-evaluating the exidence and redetermining its sufficiency to support the Board's findings and order. This Court need do no more, as to petitioner's nonconstitutional contentions, than to satisfy itself that the court of appeals reasonably construed the statute and made a fair assessment of the record. That the court of appeals did so, we submit, is evident from its opinion. In any event, as we will now show, the Board and the court below correctly applied the statutory definition of a Communist-front organization to the evidence in this case.

B. THE BOARD AND THE COURT BELOW PROPERLY CONSTRUED AND APPLIED THE CONTROL COMPONENT OF SECTION 3(4)

Petitioner makes numerous attacks on the Board's findings concerning its control by the Communist Party. Before discussing those contentions, it is important to note that the Court's holding in the *Communist Party* case—that a reviewing court must give weight to an administrative agency's decision not only in determining the facts but in the construction of its statute—specifically involved the control component of Section 3(3) of the Act. In so holding, the Court quoted from *Rochester Telephone Corp.* v. *United States*, 307 U.S. 125, 145–146, which involved the meaning of control by one carrier of another under the Federal Communications Act:

> This is an issue of fact to be determined by the special circumstances of each case. So long as there is warrant in the record for the judgment of the expert body it must stand.

The same equally applies to the control component in Section 3(4).

1. The evidence supports the Board's finding that petitioner was controlled by the Communist Party

a. In the *Communist Party* case the Court defined subjection to control, for the purpose of the Act, as "a disposition unerringly to follow the dictates [of the controller], not by the exercise of independent judgment on the intrinsic appeal that those dictates carry, but for the reason that they emanate from that [controller]." 367 U.S. at 39–40. Petitioner contends

(Br. 96–97) that the record contains no evidence that petitioner received dictates from the Communist Party; instead, it says that the evidence shows that the organization was governed by annual conferences open to the public.

Petitioner fails to note that the Court went on in the *Communist Party* case to explain more fully its interpretation of the control component of Section 3(3). The Court specifically stated that control did not require "the sort of enforceable power over the organization's members which an employer has over an employee * * *." 367 U.S. at 40. Instead, the Court said that control "may also consist of other incidents which assure that the organization will unquestioningly adhere to the line of conduct appointed for it." *Ibid.* Among these incidents, the Court suggested subjection of the leadership of the controlled organization to the personal discipline of the controlling organization and allegiance owed by the controlled organization's leaders to the controlling organization.

There can be no doubt that the Court's definition of control in the *Communist Party* case is met here. The evidence which is described in the Statement above (pp. 4–13), shows that petitioner arose from an organization which was the American branch of an organization with headquarters in Moscow and which within the United States was controlled by a "Communist fraction" and a Party official. The executive secretary and dominant figure of petitioner from 1941 until his death in 1959 was Abner Green, who

was a member of the Communist Party [22] and was chosen by it to run petitioner. The second most important person in petitioner was Harriet Barron, the administrative secretary, who was also a Party member. Both Green and Miss Barron participated actively in Party affairs and carried out Party policies in running petitioner. Dorothy Strange, the naturalization aid director, was also a Party member and was working for the Party when participating as an officer of petitioner.

The evidence showed that the local committees [23] of petitioner were, at least in large part,[24] run by members of the Communist Party. In addition, there was testimony that one such local committee was started by a Party member who was assigned by the Party to this task, received instructions from Party officials, and reported her progress to them.

In short, petitioner was run almost entirely by members of the Communist Party. While there was evidence that these members were actually carrying out Party orders and policies within petitioner, such evi-

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[22] Contrary to petitioner's suggestion (Br. 88), there was explicit testimony that Green was a Party member (Tr. 978–985, 991–996, 1007, 1194–1195). Petitioner also says (Br. 89) that various evidence tending to support this specific testimony was hearsay. However, administrative agencies can properly rely on hearsay to support other direct evidence (see p. 87 below).

[23] We shall show below (pp. 93–97) that the local committees were part of petitioner and not separate organizations.

[24] No evidence was introduced concerning the officers of several of the local committees (see p. 12, note 8 above). As to the committees concerning which there was evidence, all were led by Party members.

dence was unnecessary. As Congress found in Section 2(15) of the Act—a finding which was upheld in the *Communist Party* case (367 U.S. at 7–8, 96–97)—members of the Communist Party act under strict discipline. Thus, it is plain that petitioner's leaders had an allegiance, and were under discipline, to the Communist Party and, consequently, petitioner was controlled by the Party, within this Court's definition of control.[25]

b. Petitioner contends (Br. 97) that the organization is run by the annual conferences, which were open to anyone, and that there was no evidence that they were subject to Party control. However, both by petitioner's constitution and in practice, the annual conference only decided general programs and left the "full responsibility" for carrying them out to petitioner's officers (Tr. 4873–4874; A.G. Ex. 37; P. Ex. 88; R. 55–56).[26] Moreover, the procedure at the annual conferences was such as to make it impossible for such gatherings actually to control petitioner. Each year the executive secretary issued several thousand printed "calls" for the annual conference, which were sent to interested organizations and individuals, and the conference was announced in the press (Tr. 4875). Any person interested could attend

[25] Petitioner states (Br. 97) that Communist doctrine was never discussed at petitioner's meetings. This is hardly surprising since the essential element of a Communist-front is that it covertly carries out Party goals so as to attract non-Communist support (Section 2(7)). See also Appendices B and C below.

[26] This is true not only for the national organization but for the local committees as well (*e.g.*, A.G. Ex. 62; R. 57).

the conference, register, and vote on whatever matters came before the meeting, including the election of officers for the next year (Tr. 4873–4875). The persons attending a conference in any one year depended largely upon the city where it was held. The annual conferences limited their work to holding committee or panel meetings, passing resolutions and declarations of principle, and electing officers. When a conference was over, its authority ended and it handed over the task of carrying on the Committee's work to the executive secretary (Tr. 4289). As the court below held (R. 75), "the annual conferences were perfunctory, as such boards and conventions so frequently are in unincorporated associations, and the real direction and control were in the hands of the chief executive officer."

c. Petitioner strongly attacks (Br. 87–88) the testimony of John Lautner, a government witness, that he (Lautner) and Avro Landy were designated early in 1942 [37] by the Communist Party to decide whether Abner Green, who was a Party member, should take over from Irving Novick, who also was a Party member, as the leader of the American Committee; that Lautner, Landy, Green, and Novick had a meeting in the Party building; and that Lautner and Landy decided in favor of Green, who then became the head of the Committee (Tr. 991–996; R. 29). Green denied that any such conference was held,

[37] Since Lautner did not claim to be able to fix the date exactly (Tr. 995), his testimony is not inconsistent with petitioner's contention (Br. 87–88) that Green became executive secretary in 1941.

and said that, according to the records of petitioner's emergency conference of December 29, 1941, he had been elected at that conference to succeed Curt Swinburne as executive secretary, and that Novick left the Committee at that time for other reasons (Tr. 4822–4850). If this were all the evidence, the question would be merely one of credibility, since the hearing examiner was not compelled to believe petitioner's chief official or its own records. The hearing examiner, who saw and heard both Lautner and Green on the witness stand, believed Lautner. He found that "on or about December 29, 1941, Green became the head or leader, as well as the secretary, of the respondent [American Committee] as the result of a decision of the Nationality Groups Commission of the Communist Party" (Recommended Decision, pp. 30–31). The Board and the court of appeals approved this finding (R. 28, 76).

In addition, there was testimony by Green himself which corroborated Lautner. Green testified that Swinburne had been secretary of petitioner for only about a year, from October 1940, to December 29, 1941, and before the latter date he had not been functioning as secretary for "several months" (Tr. 4823–4824, 4841–4842, 4846–4847); that Swinburne, as executive secretary, and Novick, as naturalization aid director, received the same salary, and Green a smaller salary (Tr. 4863, 6442); that Novick had been acting executive secretary from the latter part of 1938 for a year and a half or two years (Tr. 4822–4823); and that, as of December 1941, there was a question whether Novick should succeed Swinburne as secretary (Tr. 4843). Thus, Green's

testimony suggested that Novick had been acting as executive secretary prior to Green's taking the post—a fact which would fully explain Lautner's testimony on this point.[25]

d. Finally, petitioner contends (Br. 88–89, 90) that the evidence concerning Green's and Mrs. Barron's connection with the Communist Party is stale because it relates to the period before 1950. Such evidence is, however, important in two ways. First, it indicates that petitioner was controlled by the Party at least up to 1950. This, in turn, suggests that control continued until the date of the hearing only five years later, particularly since there was no evidence of loss of control and there was other evidence that petitioner had connections with Party leaders as late as 1953 (Tr. 1547, 1597–1600; R. 30). Second, this evidence indicates that Green and Mrs. Barron themselves continued, again in the absence of evidence to the contrary, to be Party members after 1950.

The importance of evidence concerning the past in a case such as this is well established. The court of appeals succinctly stated in *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531, 570 (C.A. D.C.):

> The past is clearly pertinent to the present nature of a person or an organization. Surely

[25] Petitioner likewise attacks (Br. 91) the findings of the Board that petitioner's naturalization aid director was a member of the Communist Party on the ground that the Board did not believe Green's testimony to the contrary. However, the Board was obviously not required to believe Green. Mary Markward testified that Mrs. Strange was a district officer of the Party and was working for the Party as an officer of petitioner (Tr. 3157, 3160, 3163, 3968; R. 41).

> a person's education and experience are pertinent to his present nature. The same is true of an organization. As a matter of fact it is rarely, if ever, possible to prove present nature by some instantaneous, contemporaneous fact, totally ignoring the whole of the past. Not only is the past clearly pertinent, it may be quite material to a determination of present nature. Whether it is material depends upon whether there is affirmative evidence of a departure from the established past. In the ordinary affairs of life and in ordinary litigation, if a person or an organization is shown to have had over many years a certain policy and program, and no more is shown, the conclusion is clearly indicated that he or it has the same policy and program in the present.

In affirming the decision below, this Court agreed (367 U.S. at 69):

> Where the current character of an organization and the nature of its connections with others is at issue, of course past conduct is pertinent. Institutions, like other organisms, are predominantly what their past has made them. History provides the illuminating context within which the implications of present conduct may be known.

Accord, *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 703–706; *United States* v. *Oregon Medical Society,* 343 U.S. 326, 333; *United States* v. *Reading Co.,* 253 U.S. 26, 43–44; *Standard Oil Co.* v. *United States,* 221 U.S. 1, 74–76; *United States* v. *Dennis,* 183 F. 2d 201, 231 (C.A. 2), affirmed, 341 U.S. 494.

2. The evidence supports the Board's subsidiary findings concerning the control component

Petitioner attacks (Br. 84–86, 91–93) the Board's subsidiary findings relating to the Communist Party's control of petitioner. The findings were made pursuant to Section 13(f), which directs the Board to "take into consideration" four factors in determining whether an organization is a Communist front. Petitioner challenges the Board's rulings on two of the factors.

a. Petitioner first claims the Board misapplied Section 13(f)(1), which directs the Board to consider "the extent to which persons who are active in [an organization's] management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization * * *." The Board found that petitioner's "entire organization (national and locals) is effectively under the management, direction and supervision, and controlled by members and representatives of the Communist Party" (R. 35).

Petitioner argues (Br. 85–86) that the Board did not find that the Communist Party members who ran petitioner were representatives of the Party at the time of the hearing. Petitioner relies on the Board's statement that Green "*has served* as a representative of the Communist Party in operating respondent" (emphasis added) (R. 31). Since the Board explicitly found that at the time of the hearing, Green was still a Party member (R. 31), it is clear that "has served" means that throughout this period Green

was both petitioner's executive secretary and a member of the Communist Party. This finding is amply supported by evidence that Green became executive secretary at the direction of the Party, remained a Party member, and carried out Party policies in running petitioner (see pp. 6–7, 15, 62, note 22, 63–66 above).

Petitioner says (Br. 86) that the Board did not find that Mrs. Barron and Miss Strange, other officers of petitioner, were representatives of the Party. The Board found, however, that petitioner's entire organization was run by "members and representatives" of the Party (R. 35.) Thus, the Board found that the members of the Party who were active in petitioner to be the Party's representatives. This conclusion is supported by Congress' finding that all Party members are under strict discipline (Section 2(15)). Moreover, there was testimony that Mrs. Barron carried out Party policies as an officer of petitioner and that Miss Strange, who was a local Party officer, had herself admitted that her work in petitioner was for the Party's benefit (Tr. 1005, 3160–3163; R. 40, 41).

b. Petitioner also contends (Br. 91–93) that the Board wrongly applied Section 13(f)(2), which directs the Board to consider "the extent to which its support, financial or otherwise, is derived from any Communist-action organization * * *." The Board found that "throughout respondent's existence there has been a clear intent and purpose of the Communist Party to aid, promote, and support respondent, and we find further that the aid and support given by or

emanating from the Party has been substantial" (R. 64). Petitioner claims that there was not a sufficient showing of support to show control by the Communist Party.

The Act does not require that the Board have extensive evidence, or to make specific findings, concerning all the factors in Section 13 in order to determine that an organization is a Communist front. Instead, it directs the Board merely to take these factors into consideration; the sole tests are those set forth in Section 3(4). *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 14; cf. *id.* at 58, 61. There can be no doubt that an organization can be controlled by, and primarily operate to give aid and support to, another organization without the controlled organization receiving any support whatever from the controlling organization.

Here, however, the Board found that petitioner received substantial support from the Communist Party. This finding is amply supported by evidence that the Party gave petitioner some financial support, circulated petitioner's literature, sold tickets to petitioner's affairs and instructed its members to contribute financially to petitioner and to participate actively in petitioner's programs. See the Statement, pp. 19–20 above.

This support of petitioner by the Party constitutes some evidence relating to both components of the definition of a Communist-front organization. It is evidence of control since it is unlikely that the Party would support an organization over which it did not

have some control and, moreover, financial assistance frequently carries with it at least some power. It is also evidence of petitioner's aid and support of the Communist Party since it is not likely that the Party would be willing to support an organization not of considerable benefit to it. Although, standing alone this evidence would not demonstrate the petitioner's control by, or support of, the Party, the record here contains abundant other evidence showing such control and support. There is no reason to suppose that the Board gave improper weight to this finding.

C. THE BOARD AND THE COURT BELOW PROPERLY CONSTRUED AND APPLIED THE AID COMPONENT OF SECTION 3(4)

1. The aid component is satisfied by evidence that an organization gives aid and support to a Communist-action organization through activities which have no direct connection with overthrow of the government

a. Petitioner contends (Br. 37–49), and the dissenting opinion below agreed (R. 86–88), that the aid component of Section 3(4) requires proof that an alleged Communist front is giving aid and support to a Communist-action organization's efforts to overthrow the government of the United States by force and violence. If petitioner and the dissent below are correct, there is no doubt that the Board's determination was erroneous since petitioner did not engage in any activities directly involving forcible overthrow. We submit, however, that that construction of the Act is plainly contrary to its language and purpose.

The crucial language is in Section 3(4), which defines a Communist-front organization. That Section,

in addition to requiring proof of control by a Communist-action organization, also requires a showing that a Communist-front organization "is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Thus, Section 3(4) on its face requires only support of a Communist-action organization; it does not require that this support be of any particular part of the activities of the latter group.

Section 2(7) describes how Communist fronts operate. Congress found that these organizations "are created and maintained, or used, in such manner as to conceal the facts as to their true character and purpose * * *. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purpose of, and the actual nature of the control and influence exerted upon, such 'Communist fronts.'" Obviously, no Communist front could operate as Congress described if it advocated forcible overthrow of the government. For such activity would immediately disclose to non-Communist members and supporters of the Communist front the nature of the latter organization.

Petitioner relies (Br. 48) on Section 13(f)(3), which directs the Board to consider "the extent to which [the alleged Communist front's] funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2 * * *."

Petitioner says that "[t]he only objectives ascribed to Communist-action organizations by section 2" are forcible overthrow of the government. But the phrase "referred to in section 2" does not modify the noun "objectives"; it modifies the words "the World Communist movement," which is described at length in section 2. This construction is plainly correct as a matter of grammar and punctuation. The adjectival phrase cannot be carried back before the article "the" preceding the words "world Communist movement." ~~Since~~ The adjectival phrase plainly does not qualify the noun "objectives" in relation to Communist-action organizations [redacted].

This conclusion is verified by the other three factors which Section 13(f) requires the Board to consider in determining whether an organization is a Communist front. All three likewise direct the Board to consider the alleged Communist front's relationship in some particular to "any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2." Since none of these other factors concern "objectives" at all, it is clear that "referred to in section 2" modifies the world Communist movement and cannot refer to the objectives of Communist-action organizations, the Communist foreign government, and the world Communist movement in these four subsections.

In any event, even petitioner's reading of Section 13(f)(3) does not help its case. First, Section 13(f) does not define a Communist-front organization and

therefore does not require the Board to make any particular findings to find an organization to be a Communist front (see p. 70 above). Instead, it requires only that the Board take particular kinds of evidence into consideration. This means that it is Section 3(4) which is controlling. Second, petitioner's construction would require a showing that the alleged front organization used its funds, resources, or personnel to further or promote the ultimate objectives of the Communist Party, *i.e.*, forcible overthrow. Clearly, peaceful activities such as defense of Communist leaders and members furthers these objectives. It is not necessary to support forcible overthrow directly in order to further it.

The testimony before Congress at the time it passed the Subversive Activities Control Act also makes clear that Communist fronts, by definition, do not directly support forcible overthrow. William Green, the President of the American Federation of Labor, testified in 1948 that "[m]any organizations, sponsored by well-meaning but ill-informed men and women prominent in the community, the academic world, and even in church life, have been created for the sole purpose of providing a respectable front for furthering Communist aims and purposes." Hearings on H.R. 1884 and H.R. 2122, before the House Committee on Un-American Activities, 80th Cong., 1st Sess. 48. J. Edgar Hoover described the purposes of front organizations as attempting to promote "the interests of the Soviet Union in the United States, the promotion of war and peace aims, the exploitation of Negroes in the United States, work among foreign-lan-

guage groups, and to secure a favorable viewpoint toward the Communists in domestic, political, social, and economic issues." *Id.*, part II, p. 41. Dr. Emerson Schmidt, representing the Chamber of Commerce, quoted from Attorney General Biddle, who referred to Communist-front organizations "[r]epresented to the public for some legitimate reform objective, but actually used by the Communist Party to carry on its activities, pending the time when the Communists believe they can seize power through revolution." *Id.*, part I, p. 145. None of these descriptions fits an organization directly supporting forcible overthrow.[29]

Petitioner's argument would strip the Communist-front provisions of the statute of virtually all effectiveness. They would apply only to organizations performing the same functions as Communist-action organizations but which were controlled by a Communist-action organization instead of directly by the world Communist movement. Thus, the front provi-

[29] Petitioner's quotation (Br. 45–46) from the House Report (H. Rep. 2980, 81st Cong., 2d Sess.) does not support its construction of the Act. The Report states that Congress intended to "distinguish those features of Communist activity against which legislation cannot and should not be directed from those in the case of which legislative restraints are clearly practicable and necessary." *Id.* at 3. This language, upon which petitioner relies, does not add any detail to the Act itself. The Report then goes on to distinguish between "Communism as an economic, social, and political theory" and "Communism as a secret conspiracy, dedicated to subverting the interests of the United States to that of a foreign dictatorship." The discussion of the court below is fully consistent with this distinction since petitioner has been shown to be an active, though secret, supporter of Communist activities in this country which, in turn, are subservient to the world Communist movement.

sions would apply only if the Party had a subsidiary organization which essentially had the same activities of directly supporting forcible overthrow as itself. It hardly could be expected that the Party would operate by duplicating organizations in this manner and in fact, it has not. With perhaps one exception, none of the cases involving front organizations has concerned organizations directly supporting forcible overthrow.[30] Moreover, the underlying theory and actual operation of Communist-front organizations for forty years—as is described in detail in Appendix B below—demonstrate that such organizations are not directly involved in forcible overthrow. Instead, as Congress found, they give aid to the Party in other ways—such as by supporting the Party on various issues; by giving financial, legal, or other aid to the Party; and by inculcating their own members with attitudes which make the organizations fertile sources for recruitment of members for the Party itself.

In short, petitioner's reading of the statute ignores the basic character of Communist-front organizations, of which Congress was well aware when it passed the statute. These groups indirectly serve the ultimate Communist aim of forcibly overthrowing the government, by aiding and supporting Communist-action organizations, *i.e.*, the Communist Party, in apparently innocent ways. For example, petitioner defends Party members from deportation, works for repeal of deportation statutes affecting Party members, and tries to make Party causes in this field seem attrac-

[30] These cases are described in Appendix C below.

tive to non-Communists. These activities benefit the Party in two ways. They keep Party leaders and members in the United States to carry on their work, and they create sympathy for the Party which may ultimately result in support for, or even membership in, the Party. While these activities could be carried on by the Party itself, they could not be done nearly as well. The chances of persuading Congress to repeal particular statutes and of developing public sympathy with Communist ideas are obviously much better if these views come from an ostensibly unprejudiced, neutral source. Moreover, greater financial and other support for all these activities is likely to be forthcoming from the public if non-Communists, as well as Communists, can be persuaded to participate.

The dissenting opinion below stated that the severity of the disabilities imposed on members of Communist-front organizations by the Act "shows that Congress had no intention of inflicting them on otherwise innocent people merely because of membership in otherwise innocent organizations that the Communist Party uses to advance an innocent aim" (R. 86).[31] However, those disabilities do not apply to members of an organization until it has been found to be a Communist front and has been finally ordered to register.

[31] The dissenting opinion also states that it is doubtful that the disabilities could constitutionally be imposed on members of front organizations. The short answer here, as in the *Communist Party* case (367 U.S. at 70–81), is that the issues are premature in a case involving an order to register. Indeed, petitioner itself does not now challenge the constitutionality of the disabilities.

Congress in effect concluded that persons who remained members of the organization after such notice are not innocent of the relationship of the organization to the Communist Party. They are likely to be Party members or at least to have consciously chosen to give support to the Party. In these circumstances Congress reasonably decided to treat members of such an organization in almost [22] the same manner as members of the Communist Party itself.

Petitioner states (Br. 46) that the statutory "construction of the Board and the court below eliminates the aid component of section 3(4)," since the Party would not control an organization unless it was used for the Party's benefit. We agree that this will almost always be so, but it is possible that the Party would not operate an organization it controlled primarily to aid itself. Indeed, in this very case, the dissenting opinion below says that the government failed to prove that petitioner was operated *primarily* to give aid and support to the Communist Party even if the government's view of the aid and support component is accepted (R. 88–89). While we disagree with this conclusion in this particular case (see pp. 82–84 below), it demonstrates that the aid component is not a mere redundancy under our construction of the Act.

Petitioner argues (Br. 39–41) that it is being ordered to register merely because it carried out the laudable objective of defending persons, including members of the Communist Party, from deportation.

[22] Members of front organizations, unlike members of action organizations, are not prohibited from working in all defense facilities (Section 5(a)(1)).

This is of course not the case. An organization may be ordered to register only when it is controlled by a Communist-action organization and operates primarily to give aid and support to this organization. When Wendell Willkie and other lawyers carried out the responsibility of the bar by defending Communists from deportation, they did not come within the statute. Registration is not required merely because some action happens to benefit the Communist Party. Indeed, registration is not even required when this is the purpose of the action. Registration is narrowly limited to organizations which are controlled by and are in effect subsidiaries of the Communist Party.

Petitioner also suggests (Br. 45) that the government's view results in the Act being "harsher and less selective" toward Communist fronts than the Communist Party. It points out that a Communist-action organization may be required to register only if it is found to support forcible overthrow of the government. However, a Communist front can be required to register only if the organization which controls it has been found to be a Communist-action organization. A Communist front is necessarily an integral part of an organization which supports forcible overthrow. Consequently, the Act is not harsher toward Communist fronts—on the contrary, it treats Communist fronts virtually the same as, and indeed as parts of, the organizations which control them.

b. Petitioner contends (Br. 28–34, 48–49) that the Act requires proof that petitioner actually aided the Communist Party and not merely that it intended to

do so; and that the Board did not find actual aid. While petitioner admits that the court of appeals did find actual support (R. 72, 77–78), it argues (Br. 37), citing *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, that a reviewing court can only rely on grounds invoked by the administrative agency.

The aid component of Section 3(4) requires a showing that the alleged Communist front is "primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Therefore, on its face, the Act seems to require only a showing of purpose and not of actual aid and support. However, there will rarely, if ever, be a case in which purpose is shown that there is not some actual aid. Consequently, this Court probably never will have to decide this issue. In any event, it clearly need not be decided here.

The Board found that petitioner provided the legal defense for officers and members of the Communist Party, fought against statutes providing for their deportation, and attempted "to win the good will of the foreign born" (R. 60). The Board then stated that "[o]bviously, these activities, particularly in opposing the laws and working to prevent the deportation of Communists, constitute aid to the Communist Party" (R. 60). Subsequently, the Board found that "[t]he weight of credible evidence established that the purposes of [petitioner] have in fact been to fight in many ways to prevent the deportation from the United States of members and officers of the Communist Party of the United States, and secondarily,

to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party" (R. 65). And in its ultimate findings, the Board concluded that petitioner is "primarily operated for the purpose of giving aid and support" to the Communist Party (R. 66). Thus, the Board found that petitioner both primarily had the purpose of aiding, and in fact aided, the Communist Party.[33]

The court of appeals found that petitioner in fact "operated primarily to aid and support the Party" (R. 78) in two ways: by contesting the deportation of Party members and by building sympathy for the Party[34] (R. 78–80). While it did not specifically

[33] Contrary to petitioner's suggestion (Br. 33, note 12), the Board's findings are perfectly clear.

[34] The court of appeals stated that "it is indubitably clear that any laudable, praiseworthy activity [of petitioner] which is identified in the public mind with the Communist Party or with Communism, * * * or is identified as being within the community of policies advocated by the Party, is a benefit to and naturally an objective of the Party. The identification of itself with laudable causes would, of course, be a benefit to the Party, as it is to any organization" (R. 80). This statement is erroneous insofar as it says that petitioner deliberately connected itself with the Communist Party or Communism. As we have described above (pp. 47–51, 76–77), the value of a Communist-front is that its relationship to Communism is kept secret so that it can attract support from non-Communists. In this way, it gets non-Communists to assume some of the responsibilities which would otherwise have to be undertaken by the Party itself and leads non-Communists toward sympathy with Communist positions. Thus, the end result is, as the court of appeals correctly found, greater public sympathy with, and support for, the Communist Party.

state that this was the purpose of petitioner's activities, this was the plain implication of the court's decision. Moreover, the court of appeals concluded that petitioner "was a Communist front within the terms of the statute" (R. 84). Since Section 3(4) explicitly rquires that a Communist front be found to be "primarily operated for the purpose of giving aid and support to a Communist-action organization," it is clear that the court agreed with the Board that this was the purpose of petitioner.

Thus, the Board and the court of appeals agreed that petitioner both had the purpose of, and actually did, operate primarily to give aid and support to the Communist Party. In these circumstances, there is no need to determine whether an organization whose purpose is to give aid and support to the Communist Party may properly be held to be a Communist front even if it did not actually give such aid and support.

2. The evidence supports the Board's finding that petitioner was primarily operated for the purpose of giving aid and support to the Communist Party

Petitioner also argues that the Board's finding that "the *purposes* of [petitioner] have been to aid and support the Communist Party" (emphasis added) (R. 53) is not supported by the evidence.

a. Since the evidence on this issue is summarized in the Statement, pp. 13–20, it will only be briefly described here. The Communist Party has long considered it important to draw the foreign born and other groups into the "class struggle" (A.G. Ex. 1, p. 701). One such effort was the International Labor

Defense, the American section of an organization with headquarters in Moscow, which in the 1930's provided legal defense for persons arrested in connection with working class activity, organized mass demonstrations and petitions concerning such arrests, and recruited members to the Communist Party. Petitioner was started in 1932 or 1933 to handle the International Labor Defense's work in deportation cases. A large, if not the greater, part of petitioner's legal work has been in behalf of officers and members of the Communist Party. In addition, petitioner worked for the repeal of deportation statutes applying to Party members and of other statutes relating to Communist activities. Former members of the Communist Party, who were familiar with petitioner's activities, testified that the purpose of the American Committee and the local committees was to protect Party members from deportation and to help the Party by attracting persons interested in the foreign born to support Party positions. And witnesses testified that the Party members who led petitioner were deliberately carrying out Party policies within petitioner. This was ample evidence to support the Board's finding.

The dissenting opinion below points to the fact that petitioner defended many non-Communists as undermining the Board's finding that petitioner operated *primarily* to give aid and support to the Communist Party (R. 88–89). However, the evidence shows that about half of the cases defended by petitioner involved Party members. Even if the proportion were significantly smaller, it would not help petitioner. The defense of non-Communists from deportation

helped petitioner to serve as a Communist front. A member of the Party testified that such defense was not incompatible with petitioner's operations as a Party defense organization, since it added to petitioner's prestige (Tr. 1134; R. 57). If petitioner had defended only Communists, its connection with the Communist Party would quickly have become apparent. By defending non-Communists, it appeared to be an independent organization interested only in the civil liberties of all the foreign born. Thus, the defense of non-Communists was necessary to attract such people to the organization. And such persons were crucial to petitioner, since they were needed to add numerical weight to petitioner's support of Party positions, to give financial aid, and, after gradual indoctrination, to be a source for new Party members. If petitioner did not attract non-Party support, there would be no need for it as a front and all its functions could be handled by the Party itself. In short, the defense of non-Communists is in no way inconsistent with the overwhelming evidence that petitioner operated to give aid and support to the Communist Party.

b. Petitioner attacks (Br. 64–69) the Board's reliance on testimony by John Lautner, Bernice Baldwin, and James Glatis concerning the policies of the American Committee and the local committees on the ground that it constitutes opinion evidence. However, as the Administrative Procedure Act provides (5 U.S.C. 1006(c)) and the cases hold (*e.g., Swift & Co.* v. *United States,* 317 F. 2d 53, 55 (C.A. 7)), ad-

ministrative agencies can consider opinion evidence and give it the weight to which they believe it entitled.

Moreover, here the government's witnesses did not base their testimony on their expert opinions as long-time Party members but on their actual experiences with the Party and with petitioner. The testimony of Lautner which petitioner attacks is that "[t]he functionaries of [petitioner], the top functionaries, like Abner Green and Harriet Bar[r]on, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organization" (Tr. 1005). Petitioner claims that this statement is too conclusory and that Lautner had no direct knowledge of petitioner's work. While Lautner's testimony does not describe particular meetings and policies, it does describe generally facts which are relevant to this case. Certainly, an administrative agency is entitled to consider such testimony. If petitioner doubted that Lautner's testimony was founded on any actual facts, it could have cross-examined him concerning the basis for his statement.

Lautner was plainly qualified to make the statement which petitioner challenges. Admittedly, Lautner did not participate directly in petitioner's activities (Tr. 1008–1010, 1138–1143, 1176). He was, however, an important Party leader and could therefore testify about Party meetings and policies (Tr. 978–985). The record also shows that he had considerable con-

tact with petitioner, including participation in the decision to make Abner Green petitioner's executive secretary (Tr. 991–996, 1077–1079). Thus, Lautner could reasonably have the information, which he claimed to have, that petitioner was carrying out Party policies.

Petitioner likewise attacks (Br. 67–69) the Board's reliance (R. 38–39) on testimony by Mrs. Baldwin and Glatis that the purpose of the Michigan and New England local committees was to defend Party members threatened with deportation. It says that these witnesses, like Lautner, were not qualified to testify concerning the local committee's policies. However, Mrs. Baldwin was a Party member who had been assigned by the Party to attend a national conference of petitioner where she was chosen an officer of the convention (Tr. 1342–1346, 1472; R. 38). Glatis, who was also a Party member, was assigned by the Party to work with Communist-front organizations in New England (Tr. 743–744; R. 38). In this capacity, he attended three meetings of the New England local committee, received literature from it, and during his Party membership heard conversations concerning the local committee's policies (Tr. 472, 733, 743–754, 762–771, 782–783; R. 38–39). Surely, it is reasonable to assume, in the absence of any indication to the contrary, that persons chosen by the Party to participate in petitioner's activities would know whether petitioner's local committees in their area were following Party policies.

Petitioner also says that Lautner's testimony concerning petitioner's policies was relied on by the

Board in considering the aid component (R. 40), while the court of appeals relied on it concerning the control component (R. 76). In fact, however, neither the court's nor especially the Board's findings are meticulously divided between the two components. This is not surprising since many kinds of evidence simultaneously support both findings. For example, Lautner's testimony that the Party members who run petitioner still are active in Party affairs and carry out Party policies within petitioner tends to show both that the Party controls petitioner and that petitioner operates to support the Party. Since this evidence related to both components, it must be assumed, in the absence of clear indication to the contrary, that it was so used by both the Board and court below.

c. Petitioner likewise attacks (Br. 69–71) the weight given by the Board to certain hearsay evidence. Here again, however, the Administrative Procedure Act allows an agency to consider such evidence (5 U.S.C. 1006(c)) to the extent that it is rationally probative as long as it is supported by other non-hearsay evidence. *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U.S. 197, 229; *National Labor Relations Board* v. *Service Wood Heel Co.,* 124 F. 2d 470, 472 (C.A. 1); *National Labor Relations Board* v. *Imparato Stevedoring Corp.,* 250 F. 2d 297, 302–303 (C.A. 3); *Willapoint Oysters, Inc.* v. *Ewing,* 174 F. 2d 676, 690–691 (C.A. 9). See also *Federal Trade Commission* v. *Cement Institute,* 333 U.S. 683, 705–706; *Interstate Commerce Commission* v. *Baird,* 194 U.S. 25, 44. The testimony which peti-

tioner attacks as hearsay consisted of statements made by Party leaders to other Party members concerning the policies of the American Committee and its local committees. Since this evidence was consistent with other non-hearsay evidence (see pp. 82–84 above), the Board could reasonably believe it.

d. Petitioner attacks (Br. 59–64) the Board's reliance on evidence that petitioner supported the defense of Fred Estes and James Green who were prosecuted for refusal to produce books or testify at immigration hearings, and that it supported and defended Gerhart Eisler in his contempt-of-Congress case and his efforts to leave the country (R. 42–44, 66). In fact, the Board hardly mentioned the *Estes* and *Green* cases in its Report. Its only conclusion based upon them is that, since these cases did not directly involve deportation, "respondent went beyond the normal defense of the foreign born by supporting Communist Party functionaries Fred Estes and James Green * * *" (R. 42). That finding is accurate—petitioner's official publication described the two cases as justifying its statement that "the Immigration and Naturalization [Service] in Texas has unleas[h]ed an 'anti-alien' hysteria which is resulting in the threatened jailing of American citizens" (P. Ex. 210, p. 2). Surely, this strong statement constituted support for the Board's reference to the *Estes* and *Green* cases.

The Board also found that petitioner's defense of Eisler went "beyond the normal, avowed purposes of respondent" and that "[t]he Eisler case is but one of a number of instances shown by the record where

[petitioner's] views and policies have been similar to and have not deviated from the views and policies of the Communist Party" (R. 43, 44; see R. 66). The first conclusion is supported by the fact that petitioner's participation in Eisler's contempt-of-Congress case, while connected to some extent with deportation, still was beyond petitioner's usual activities.

In any event, the statements concerning the *Eisler* and especially the *Estes* and *Green* cases are hardly vital to the Board's conclusion that petitioner operates primarily to give aid and support to the Communist Party. These conclusions were based on hundreds of cases and years of propaganda activity. Consequently, even if the statements by the Board concerning the *Eisler, Estes,* and *Green* cases were ignored entirely, it would make no difference. As this Court held in the *Communist Party* case, where the court of appeals had struck a subsidiary administrative finding (367 U.S. at 67):

> Remand would be called for only if there was solid reason to believe that without that subsidiary finding the agency would not have arrived at the conclusion at which it did arrive.

Accord, *National Labor Relations Board* v. *Newport News Co.*, 308 U.S. 241, 247; *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131 (C.A. 1), certiorari denied, 346 U.S. 887; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 169 F. 2d 881, 883 (C.A. D.C.), certiorari denied, 335 U.S. 854. Upon a reading of the Board's full report, it is evident that the findings as to Eisler, Estes, and Green were not crucial to the Board's ultimate conclusion.

e. Petitioner objects (Br. 71–72) to the Board's reliance on praise by an official publication of the Communist Party for petitioner's work as showing petitioner's purpose to support the Communist Party. Since this is an extremely minor element of the Board's findings and is clearly not essential to its ultimate determination, the holding below should not be reversed even if petitioner were correct that this evidence is insubstantial. In fact, the evidence is relevant. Section 13(f)(2) directs the Board to consider "the extent to which" an alleged front organization receives "its support, financial or otherwise * * * from any Communist-action organization." The statements of the Party publication clearly constituted support for petitioner. After the sentence quoted by petitioner in which the Party publication praised petitioner, it went on to say that "[i]t is the duty of all progressives to appreciate the need of [petitioner], help raised funds and support [its] work" (A.G. Ex. 229, p. 127; R. 40).

f. Section 13(f)(4) of the Act directs the Board to consider "the extent to which the positions taken or advanced by [the alleged front organization] from time to time on matters of policy do not deviate from those of any Communist-action organization * * *." Petitioner argues that the Board and the court below erred in considering the evidence of non-deviation as related to the aid component (Br. 73–74) and in weighing the evidence of non-deviation (Br. 74–80; see also Br. 93–96).[35]

[35] Petitioner also states (Br. 73–74) that the Board relied on non-deviation only to support its findings as to the aid com-

The Board relied upon the evidence of non-deviation to support its finding that petitioner operated primarily to give aid and support to the Communist Party (R. 53). This conclusion seems self-evident—if an organization invariably agrees with the policies of another organization (and particularly when there is other evidence that the first organization is controlled by the second), this is evidence that the first organization is operating in support of the second. For the state of a man's mind, his "purpose," must be inferred from what he says and does. *American Communications Assn.* v. *Douds,* 339 U.S. 382, 411; *Killian* v. *United States,* 368 U.S. 231, 247–249.

Moreover, as this Court held in the *Communist Party* case, non-deviation also is evidence that the second organization controls the first. 367 U.S. 1, 61. The fact that non-deviation relates to the control component does not suggest, either as a matter of logic or by virtue of this Court's decision in the *Communist Party* case, that it does not also relate to the aid component. Accord, *Veterans of the Abraham Lincoln Brigade* v. *Subversive Activities Control Board,* 331

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ponent; that the court of appeals used this evidence as to the control component; and that the reviewing court may not base its findings on evidence not used for this purpose by the administrative agency. However, as pointed out above, the Board's findings are not rigidly compartmentalized between the two components. While it plainly did use evidence of non-deviation to find support of the Communist Party (R. 53), there is no reason to believe that it so limited its reliance on this evidence (see R. 65–66).

F. 2d 64, 71 (C.A. D.C.), pending on writ of certiorari, No. 65, this Term.

Petitioner also attacks the evidence relied upon by the Board in its finding of non-deviation. Despite petitioner's numerous quibbles, it can point to no subject upon which it and the Communist Party differed.[36] In contrast, the evidence shows not only many subjects upon which their viewpoints were identical but also significant similarities of phraseology (*e.g.*, cf. A.G. Exs. 281, 282, 283 with A.G. Exs. 185, 194, 199; cf. A.G. Ex. 169 with A.G. Ex. 279, p. 3).

g. The Board found that a secondary purpose of petitioner was "to seek to win the good will of a certain section of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party" (R. 65). Petitioner claims (Br. 80–83) that this finding is not supported by evidence. In fact, however, the evidence shows that the Party's policy is to attract the foreign born into the Party (A.G. Ex. 1, p. 701; R. 36). Since other evidence shows that petitioner is controlled by the Communist Party and that the Party actively supports petitioner, there is a strong likelihood that this is petitioner's purpose.

[36] Petitioner says (Br. 75) that it opposed only the registration sections of the Smith Act while the Party opposed only the "sedition" provisions. Even if this were true, this does not show deviation. It would only show that on two subjects only one of the two organizations took any stand. In fact, however, petitioner did attack the "sedition" sections of the Smith Act (A.G. Ex. 169; P. Ex. 191; R. 45, 46; see also A.G. Ex. 56 (p. 6); R. 46). While petitioner says that Attorney General's Exhibit 169 was not published by petitioner, it was written by its executive secretary, Abner Green, the magazine states that the article is published "in association with" petitioner, the officers and addresses of petitioner are listed, and a coupon appears which is to be used for making contributions to petitioner.

This inference is supported by substantial direct evidence. Petitioner grew out of an organization which had as one of its purposes the attraction of members to the Communist Party (Tr. 228, 237–238; R. 37). Two witnesses testified that petitioner's North-West committee was formed in part to attract the foreign born to support Party positions (Tr. 1581–1583, 2977; R. 36). And John Lautner testified that petitioner's leaders carried out Party policies within petitioner, which would include attracting the foreign born to the Party (Tr. 1005, 1139; R. 40, 57–58).

D. THE BOARD AND THE COURT BELOW PROPERLY CONSTRUED AND APPLIED THE DEFINITION OF "ORGANIZATION" IN SECTION 3(2)

Petitioner claims (Br. 50–53, 56–57) that the Board and the court of appeals misconstrued the Act in finding that the various local committees for Protection of Foreign Born were part of the same organization as the American Committee.[37] It was on the basis of this finding that the Board and the court below considered the evidence relating to the control and operations of the local committees as relating to petitioner.

1. The Board correctly construed the Act

Section 3(2) of the Act defines "organization" as "an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint

[37] The constitutionality of this construction under the First Amendment and due process clause of the Fifth Amendment is discussed below at pp. 146–148.

action on any subject or subjects." The Board found that "the American Committee and the various area or local committees are associated together for joint action on particular subjects. Together they constitute a voluntary association and are organizations within the meaning of the term 'organization' set forth in section 3(2) of the statute" (R. 27).

The court of appeals decided that it was not necessary to decide whether the local committees were "autonomous organizations" or were "integral parts" of petitioner because "[i]t is abundantly clear that, whatever the technicalities may be as to the nature of these unincorporated associations, they were intermeshed with the national group, not only in policies but in operation" (R. 77). Thus, the court of appeals in effect restated the definition of organization in Section 3(2) in different words.

Petitioner attacks the Board's construction of Section 3(2) on the ground that the Board relied upon the portion of the definition referring to "a group of persons * * * associated together for joint action." Petitioner says that this phrase cannot be applied to groups as well as to persons who are associated together. However, Section 3(1) defines "person" in the Act to mean "an individual or an organization." Therefore, Section 3(2) in effect includes within its definition of an "organization" "a group of persons or of organizations * * * associated together for joint action." Moreover, there is no logical difference between the joint action of groups and of individuals. Stated differently, if individuals associated together for joint action constitute an organization, so do

groups associated together for joint action. This Court has construed another statute, without such a broad definition, as allowing organizations which are formally separate to be treated as one "organization." *Sunkist Growers, Inc.* v. *Winckler & Smith Citrus Products Co.*, 370 U.S. 19, 27–29. Here, where the Act has a broad definition of "organization" the Board's construction was, at the least, reasonable and well within the discretion of the administrative body charged with the responsibility of construing and applying the statute (see p. 57 above).

In any event, the Board did not rely only on the portion of Section 3(2) referring to persons associated for joint action. The Board also found that petitioner and the local committees together constituted a "voluntary association." Since Section 3(2) defines "organization," *inter alia,* as an association, this finding is plainly based on a proper construction of the Act.

Finally, petitioner contends (Br. 50–56) that the Board was required to find that the American Committee controlled the local committees. Nothing in the statute requires this construction. Indeed, it is completely inconsistent with the phrase "associated together for joint action," since such association plainly does not require control. While, as petitioner notes, the American Committee may not be able to obtain information required for registration from the local committees unless it controls them, this would merely mean that the American Committee would not violate the Act by failing to provide this information.

Petitioner also says (Br. 57) that the Board's construction of the Act means that the Communist-front provisions are unnecessary since under the Board's interpretation of "organization," Communist fronts are part of the Communist Party. Stated differently, petitioner's argument is that the findings and order in the *Communist Party* case concerning the Party would automatically include all Communist fronts if the Board's broad definition of "organization" were correct. However, petitioner's definition of "organization" involves the same problem. For under that definition a Communist front must control any persons or groups which are to be considered as part of it. But such control of Communist fronts by a Communist-action organization is specifically required by Section 3(4). Thus, under either petitioner's or the Board's construction of Section 3(2), it would be arguable, considering that Section alone, that Communist-front organizations must be treated as part of the Communist Party both in making findings concerning the character of the Party and in determining the scope of the Board's order for the Party to register. However, the Communist-front provisions in the Act settle any possible ambiguity by making plain that separate proceedings are required before a front organization can be compelled to register.

2. The evidence supports the Board's finding

The evidence before the Board is summarized in the Statement at pages 8–10. Briefly stated, the local committees had the identical name as petitioner except that "American" was replaced by "North-

West," "Mid-West," and the like. The American Committee's publications frequently listed the local committees under the heading "American Committee for Protection of Foreign Born," with the local committees simply designated as "North-West," etc.; treated the activities of the local committees as part of its own; and stated that various local committees were "a part of" or "affiliated to" the American Committee (P. Ex. 151, p. 5; A.G. Ex. 34). The American and local committees worked closely together in defending cases and or other activities. The American Committee initiated the organization or reorganization of local committees. The executive direction of the American Committee acted as coordinator of the local committees and officers of the American Committee were officers of local committees. This evidence thus fully supported the finding of the Board that the American Committee and the local committees were associated together for joint action.

E. THE BOARD DID NOT ERR IN LIMITING THE CROSS-EXAMINATION OF GOVERNMENT WITNESS LAUTNER

Petitioner contends (Br. 98–102) that the hearing examiner erroneously limited its cross-examination of an important government witness, John Lautner; that therefore his testimony must be stricken; and that the remaining evidence does not support the Board's determination. More specifically, petitioner points to the refusal of the hearing examiner to require Lautner to answer one question: "Where do you live?" (Tr. 1083–1088; R. 113–115).

We have seen (pp. 58–59) that this Court held in the *Communist Party* case that the Board has broad power to determine whether to strike the testimony of a witness when by mistake the government failed to produce his possibly inconsistent statements which would have served as the basis for cross-examination. 367 U.S. at 28–29. *A fortiori,* the Board has discretion to refuse to strike a witness' testimony where the hearing examiner refused to allow a single question which did not directly concern the witness' testimony but related only to his background. As the Board concluded (R. 28, note 1):

> Lautner's direct testimony covered 100 pages of the transcript and he was cross-examined for 283 pages. We see no basis for contending that the absence of Lautner's residence address in any way impaired cross-examination. Respondent developed that at the time of testifying Lautner was a paid employee of [the Attorney General] and the cross-examination shows that respondent's counsel was adequately informed as to Lautner's background, environment and activities.[38]

Thus, even if the question should have been allowed, it was well within the Board's discretion to determine that this refusal to permit a single question during extensive cross-examination of a witness (Tr. 1076–1312, 1792–1838) was not prejudicial error requiring the striking of his entire testimony.

Moreover, the hearing examiner's ruling was proper. The Administrative Procedure Act provides

[38] See, *e.g.*, Tr. 1794–1806.

that administrative agencies shall allow "such cross-examination as may be required for a full and true disclosure of the facts." 5 U.S.C. 1006(c). Here, as the Board pointed out, this question had only slight value in disclosing any facts. Furthermore, the hearing examiner had good reason for not requiring Lautner to give his home address. Lautner had testified that his life had been threatened (Tr. 1835). The cross-examination, which petitioner says (Br. 100) was "designed to expose the claim as insincere," did not include questions concerning such threats, but was instead limited to argumentative questions such as, "As a matter of fact, the reason that you gave for refusing to answer my question is a complete invention which you have made up to glamorize and dramatize yourself, isn't that true?" (Tr. 1087–1092). In these circumstances, the Board did not abuse its broad discretion in sustaining the examiner's refusal to allow petitioner to ascertain Lautner's home address.

Petitioner relies on *Alford* v. *United States*, 282 U.S. 687, where the Court held that the refusal of a district court to allow cross-examination of a government witness concerning his residence was prejudicial error. *Alford*, however, is not controlling here. First, *Alford* was a criminal case; administrative agencies have broader discretion in determining the scope of cross-examination. The extent of examination and cross-examination of witnesses rests in the sound discretion of the trial examiner. *Loesch* v. *Federal Trade Commission*, 257 F. 2d 882 (C.A. 4), certi-

orari denied, 358 U.S. 883; *National Labor Relations Board* v. *Grieder Machine, Tool and Die Co.*, 142 F. 2d 163 (C.A. 6), certiorari denied, 323 U.S. 724; cf. *Reilly* v. *Pinkus*, 338 U.S. 269, 276.

Second, the Court did not suggest that refusal to allow this question was a reversable error under all circumstances. Thus, in *United States* v. *Easterday*, 57 F. 2d 165, 166 (C.A. 2), Judge Learned Hand did not read *Alford* as laying down an inflexible rule. Accord, *United States* v. *Krulewitch*, 167 F. 2d 943, 947 (C.A. 2), reversed on other grounds, 336 U.S. 440. In *Capriola* v. *United States*, 61 F. 2d 5, 10 (C.A. 7), the court of appeals said that the question of danger to a witness from disclosure of his home address was a matter of discretion for the trial judge. And in *United States* v. *Rich*, 262 F. 2d 415, 418–419 (C.A. 2), the court upheld a district court's refusal to allow a question on cross-examination concerning a witness' address because of the danger of intimidation.

Finally, this Court's holding in *Alford* was based on two possible uses for the witness' home address—(1) "to place the witness in his proper setting and put the weight of his testimony and his credibility to a test"; and (2) to disclose whether the witness was in government custody, which might indicate that "his testimony was biased because given under promise or expectation of immunity." 282 U.S. at 692, 693. Defense counsel pointed out both reasons for the question to the district court, which nonetheless ruled it to be immaterial. *Id.* at 689–690, note 1. The second reason in *Alford* does not apply here at all. Lautner

admitted his connection with the government—indeed, he testified that he was an employee of the government and could be reached at the Department of Justice (Tr. 976, 1794–1806; R. 28, note 1). Thus, the question asked by petitioner's counsel had no direct relevance to possible bias of the witness. While the question might have led to additional background as to Lautner, petitioner's counsel suggested no justification for seeking the witness' address, but apparently believed he was entitled to ask it as a matter of right (Tr. 1086–1087). As we have shown, this assumption was erroneous.

III

THE REGISTRATION PROVISIONS OF THE SUBVERSIVE ACTIVITIES CONTROL ACT ARE CONSTITUTIONAL

The registration provisions of the Subversive Activities Control Act have two parts. First, they provide for a determination whether an organization is controlled by, and primarily operates to give aid and support to, a Communist-action organization and therefore is a Communist-front organization. Second, the Act requires such organizations to register, to disclose the names of their officers, and to give a financial accounting. It is clear that Congress considered the making of findings as to the Communist-action or -front character of organizations to be an important function standing alone, regardless of whether the subsequent registration can actually be compelled. As we have seen (pp. 36–47), Congress had attempted for more than ten years before passage of the Act to provide effective means for publicizing the

activities of individuals and groups acting for foreign governments. Moreover, it is significant that Congress gave the Board the power, with regard to "Communist infiltrated" organizations, to make orders and findings determining the character of such organizations, without requiring them to register (see Appendix A, p. 182 below). And, finally, the Act has a broad separability clause providing that, if any provision or application of a provision of the Act is held invalid, the remaining provisions and applications shall not be affected (Section 32).

We therefore consider the constitutionality of the two parts of the registration provisions separately. We will show at length below that the requirements of registration and disclosure are constitutional. We will first show here, however, that the constitutionality of determining whether organizations are Communist fronts is plain beyond doubt.

A. THE AUTHORITY OF THE BOARD TO DETERMINE WHETHER ORGANIZATIONS ARE COMMUNIST FRONTS IS CONSTITUTIONAL

In *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, this Court upheld the constitutionality of the provisions of the Act requiring Communist-action organizations to register. *Id.* at 81–105, 110–115. Justices Douglas and Brennan, in dissenting, said that the registration provisions could not be enforced because of the privilege against self-incrimination but otherwise upheld the Board's determination. *Id.* at 174, 190. While Mr. Justice Black dissented on the ground of the First Amendment, he based his opinion entirely on the coercive effect of

the Act. *Id.* at 137–169.[39] Thus, every Justice who voted on the issue either explicitly or, in the case of of Mr. Justice Black impliedly, agreed that the Board's determination concerning the character of the Party was constitutional.

Earlier, in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 125, this Court considered the constitutionality of the Attorney General's list of "totalitarian, fascist, communist or subversive" organizations. While the Court held ~~the list~~ three listings invalid, only one of the six opinions stated that the mere listing of an organization alone violated the First Amendment. Mr. Justice Burton found the list invalid because the determinations as to the various organizations were arbitrarily made without evidence to support them and the President had not delegated such an arbitrary power to the Attorney General. *Id.* at 136–139. Justices Douglas, Frankfurter, and Jackson agreed with this conclusion because the lack of fair procedures violated the due process clause of the Fifth Amendment. *Id.* at 161–174, 178–183, 186. And the three dissenting Justices specifically rejected the First Amendment argument. *Id.* at 199–200. Only Mr. Justice Black said that the list violated the First Amendment. *Id.* at 143.

In addition, numerous decisions of this Court have upheld against attack under the First Amendment, statutes which require organizations to disclose various information. These cases, which are discussed below (pp. 114–116), apply *a fortiori* to a mere determination concerning the character of an organization.

[39] The Chief Justice took no position on this issue.

The Board follows the same procedure in making determinations concerning Communist-front organizations as it does in cases involving Communist-action organizations. Unlike the list involved in the *Joint Anti-Fascist* case, under this Act the finding that an organization is a Communist-action group must be made on the basis of evidence developed in a full administrative hearing—in which the burden of proof is on the government and the organization has the right to cross-examine government witnesses and to offer evidence—and it is followed by full judicial review. In the *Communist Party* case this Court apparently had no doubt as to the propriety of this procedure for making the determination as to the character of a Communist-front organization, and the appropriateness of making such determination. The need for determining whether organizations are Communist fronts is, if anything, even greater, and the validity of making such determinations even clearer.

Communist-action organizations, although they frequently operate secretly, usually make clear their connection to the world Communist movement. Thus, for example, no one could join or support the Communist Party without knowing at least generally that it was Communist. On the other hand, Communist-front organizations, although often operating publicly, almost invariably conceal their connection with Communism. As a result, as Congress found in this Act, Communist-front organizations "are able to obtain financial and other support from persons who would not extend such support if they knew the true

purposes of, and the actual nature of the control and influence exerted upon, such 'Communist fronts'" (Section 2 (7)).

The Board's determination that an organization is a Communist front has two effects. Persons who have been deceived into supporting a Communist-controlled organization without knowing it are provided with the information upon which they can decide whether to continue their support. Conversely, the Act undoubtedly interferes with the organization's activities since members and contributors who would not knowingly support a Communist-controlled organization will disaffiliate themselves. The result may be, where most of the Front's support is from deceived non-Communists, that the front will no longer be able to continue. But, surely, Congress has the power to provide for notifying the people that certain organizations are indirectly controlled by a foreign government so that they can decide for themselves whether they wish to belong to and support such organizations. As Mr. Justice Black, with whom Mr. Justice Douglas concurred, stated concerning the Foreign Agent Registration Act in dissenting in *Viereck* v. *United States*, 318 U.S. 236, 251:[40]

> Resting on the fundamental constitutional principle that our people, adequately informed, may

[40] The constitutionality of the Foreign Agents Registration Act was not challenged in the *Viereck* case, either in the court of appeals (*Viereck* v. *United States*, 130 F. 2d 945 (C.A. D.C.), reversed, 318 U.S. 236; *Viereck* v. *United States*, 139 F. 2d 847 (affirming conviction following retrial), certiorari denied, 321 U.S. 794), or in this Court. This Court's reversal of Viereck's first conviction was based on grounds not material here.

be trusted to distinguish between the true and false, the bill is intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment.

As to the Fifth Amendment—insofar as the Act merely provides for determining whether organizations are controlled by, and operate primarily to give aid and support to, Communist-action organizations—no issue is even raised. For neither petitioner nor any of its officers or members are called upon to do anything. Thus, the dissenting opinions in the *Communist Party* case which were based on the Fifth Amendment disagreed with the majority only insofar as the Communist Party was ordered by the Board to register and disclose certain information. 367 U.S. at 170–175, 190.

B. THE AUTHORITY OF THE BOARD TO ORDER DISCLOSURE IS CONSTITUTIONAL

1. The disclosure requirements do not violate the First Amendment

a. This Court's Decision in Communist Party v. Subversive Activities Control Board *Is Controlling*

In *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, this Court considered the constitutionality under the First Amendment of the registration provisions of the Act in a case involving a Communist-action organization. The Court held that, when a restraint on speech or assembly results in-

cidentally, rather than directly, the courts must balance the importance of the national interest against the degree of interference with personal rights; that in the Act, Congress made findings, which were based on extensive investigation and cannot be deemed irrational, that Communist organizations in this country are under the control of a foreign country and pose a serious danger to the government of the United States; that Congress has broad power to protect the Nation against such foreign danger; that the Court had previously upheld numerous registration and disclosure statues; and that consequently Congress may constitutionally require registration, including disclosure of officers and members of the organization and a financial accounting. 367 U.S. at 88–105. We submit that this holding equally applies to the present case.

Moreover, as we have noted, of the four dissenting Justices in the *Communist Party* case, only Mr. Justice Black would have held the Act unconstitutional on the basis of the First Amendment. 367 U.S. at 137–169. While the Chief Justice did not find it necessary to reach this issue (*id.* at 136–137), Justices Douglas and Brennan both concluded that the Act was not unconstitutional on this ground (*id.* at 175, 191). Indeed, Mr. Justice Douglas' summary of why the First Amendment does not prohibit requiring the Communist Party to register succinctly states why such a requirement as to petitioner is also valid (*id.* at 174–175):

> The Bill of Rights was designed to give fullest play to the exchange and dissemination of

> ideas that touch the politics, culture, and other aspects of our life. When an organizations is used by a foreign power to make advances here, questions of security are raised beyond the ken of disputation and debate between the people resident here. Espionage, business activities, formation of cells for subversion, as well as the exercise of First Amendment rights, are used to pry open our society and make intrusion of a foreign power easy. These machinations of a foreign power add additional elements to free speech just as marching up and down adds something to picketing that goes beyond free speech.

Here, petitioner is indirectly, but just as surely, controlled by a foreign power and it operates secretly through covert means designed to make intrusion of a foreign power easy.

This case, like the *Communist Party* case, involves the registration provisions of the Act (Section 7). The only difference between the two cases is that petitioner has been found to be a Communist-front organization whereas the Community Party is a Communist-action organization. This means that the Communist Party is controlled by, and supports, the world Communist movement while petitioner is controlled by, and supports, the Communist Party. Petitioner is just as much a part of the world Communist movement as the Party itself; the only difference is that the movement controls the Party directly, and petitioner indirectly.

Congress found in Section 2 of the Act that Communist-action organizations operate through Com-

munist fronts which conceal their true character. This Court specifically upheld this finding in the *Communist Party* case (367 U.S. at 94–95):

> And Congress has found that these action organizations employ methods of infiltration and secretive and coercive tactics; that by *operating in concealment and through Communist-front organizations, they are able to obtain the support of persons who would not extend such support knowing of their true nature;* that a Communist network exists in the United States; and that the agents of communism have devised methods of sabotage and espionage carried out in successful evasion of existing law. The purpose of the Subversive Activities Control Act is said to be to prevent the world-wide Communist conspiracy from accomplishing its purpose in this country.
>
> It is not for the courts to re-examine the validity of these legislative findings and reject them. See *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 590. They are the product of extensive investigation by Committees of Congress over more than a decade and a half. Cf. *Nebbia* v. *New York,* 291 U.S. 502, 516, 530. We certainly cannot dismiss them as unfounded or irrational imaginings. See *Galvan* v. *Press,* 347 U.S. 522, 529; *American Communications Assn.* v. *Douds,* 339 U.S. 382, 388–389. [Emphasis added.]

The finding concerning Communist fronts is amply supported by evidence that Communist-front organizations have been for forty years a vital weapon in Communist strategy to overthrow democratic governments (see Appendix B below).

Surely, if Congress can require registration of a Communist-action organization, it can require registration of its instrumentalities. Both are controlled by, and have the primary purpose of supporting, the world Communist movement. If any constitutional distinction is drawn between these two types of Communist organizations, Congress' power over Communist-action organizations could be reduced to a virtual nullity by such organizations delegating all or most of their functions to subsidiaries. Such a result is plainly inconsistent with the underlying rationale of the *Communist Party* case that Congress has broad power to regulate Communist organizations in the interest of protecting national security. For the Court, in upholding the registration provisions as to Communist-action organizations, relied upon the findings of Congress that the Communist movement is a single conspiracy which Congress has the power to regulate as a whole (367 U.S. at 96–97):

> Of course, congressional power in this sphere, as in all spheres, is limited by the First Amendment. * * * But where the problems of accommodating the exigencies of self-preservation and the values of liberty are as complete and intricate as they are in the situation described in the findings of § 2 of the Subversive Activities Control Act—when existing government is menaced by a world-wide integrated movement which employs every combination of possible means, peaceful and violent, domestic and foreign, overt and clandestine, to destroy the government itself—the legislative judgment as to how that threat may best be met consistently

> with the safeguarding of personal freedom is not to be set aside merely because the judgment of judges would, in the first instance, have chosen other methods. Especially where Congress, in seeking to reconcile competing and urgently demanding values within our social institutions, legislates not to prohibit individuals from organizing for the effectuation of ends found to be menacing to the very existence of those institutions, but only to prescribe the conditions under which such organization is permitted, the legislative determination must be respected. *United Public Workers* v. *Mitchell*, 330 U.S. 75; *American Communications Assn.* v. *Douds, supra.*

And subsequently, the Court again stated (*id.* at 102–103):

> Where the mask of anonymity which an organization's members wear serves the double purpose of protecting them from popular prejudice and of enabling them to cover over a foreign-directed conspiracy, *infiltrate into other groups, and enlist the support of persons who would not, if the truth were revealed, lend their support,* see § 2(1), (6), (7) [quoted, *supra*], it would be a distortion of the First Amendment to hold that it prohibits Congress from removing the mask. [Emphasis added.]

Assuming that some constitutional distinction can be drawn between the application of Section 7 to Communist-action and Communist-front organizations, we submit that the constitutionality of the application to Communist-fronts is more clear. The registration provisions are significantly narrower for Communist-front organizations. While Communist-

action organizations must disclose the names of their officers and members, Communist-front organizations need disclose only their officers. Thus, there is considerably less danger than in the *Communist Party* case that registration will result in "angry public opinion" being directed against ordinary members of the organization thereby interfering with the full exercise of First Amendment rights. See 367 U.S. at 102. Cf. *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449; *Bates* v. *Little Rock*, 361 U.S. 516. This Court held in the *Communist Party* case that this result did not overweigh the vital considerations of national security upon which Congress based the statute; Congress could even more clearly require registration when the possible restraint on speech and assembly was so significantly less.

Petitioner claims (Br. 106) that this Court held in the *Communist Party* case that the Act's registration requirement may constitutionally be applied only to organizations which endanger national security because they are part of a "dangerous, foreign-controlled conspiracy, seeking by illicit means to overthrow the government." We agree. As the Court said, Congress may not constitutionally require organizations to register which merely "pursue[d] unpopular political objections or which expresse[d] an unpopular political ideology." 367 U.S. at 104. But this, of course, is not what has been found in this case. Instead, as we have emphasized above, the Board has concluded on the basis of ample evidence that petitioner is controlled by the Communist Party which is in turn controlled by the

world Communist movement. Thus, petitioner has been found to be a part of the very Communist conspiracy which this Court concluded in the *Communist Party* case advocated overthrow of the government and constituted a serious threat to national security.

b. Even if the Communist Party *case is not controlling, the registration provisions of the Act, as applied to Communist-front organizations, do not violate the First Amendment*

There can be no doubt that the registration requirements of the Act have an impact on petitioner and its leaders. The very finding of the Board that petitioner is controlled by, and supports, the Communist Party reveals to members and contributors the theretofore concealed relationship of petitioner to Communism (see pp. 102–106 above). Moreover, if petitioner fully registers, the names of its officers (but not members) will be disclosed as connected with a Communist-front organization. We do not deny that, as a consequence, speech and assembly will be somewhat affected.

On the other hand, Section 7 does not impose any direct restraints on speech and assembly. This provision, like the Act as a whole, is designed to regulate activities which are part of the world Communist conspiracy that has as a major purpose the overthrow of the government of the United States. While the activities may include forming an organization (*i.e.*, assembly) and taking positions (*i.e.*, speech or press), the statute is aimed at far more dangerous conduct. Thus, the issue under the First Amendment as in the

Communist Party case, is whether Congress may pass a statue directed at the danger to national security coming from the world Communist movement, even though the statute has an incidental effect on freedom of speech, press, and assembly.

(*i*) *The First Amendment permits indirect restraints on free speech, press, and assembly in some circumstances.*—It is a settled principle of constitutional law than that the freedoms guaranteed by the First Amendment are not absolute. *E.g., Schenck* v. *United States,* 249 U.S. 47, 52; *Dennis* v. *United States,* 341 U.S. 494, 508. As Mr. Justice Story wrote in 1840: "That this Amendment was intended to secure to every citizen an absolute right to speak, or write, or print, whatever he might please, without any responsibility, public or private, therefor, is a supposition too wild to be indulged by any reasonable man." Story, *The Constitution* (1840), p. 261. Even direct limitations on expressions otherwise protected by that Amendment may be permissible where clearly necessary to meet a clear and present danger of substantive evil. *Schenck* v. *United States, supra,* 249 U.S. at 52; *Dennis* v. *United States, supra,* 341 U.S. at 509–510. A *fortiori,* indirect limitations come within the rule. *American Communications Assn.* v. *Douds,* 339 U.S. 382, 402–404.

The law is filled with examples of statutes which place limited, indirect restraints on speech or the press, but which are nevertheless valid because the statute's objective lies within the power of Congress, and the restraint is a necessary and appropriate con-

comitant of the exercise of the power. The Federal Regulation of Lobbying Act (Act of August 2, 1946, Title III, Section 305, 307–308, 60 Stat. 840–842; 2 U.S.C. 264, 266–267) validly requires all "those who for hire attempt to influence legislation or who collect or spend funds for that purpose" to spread on the record pertinent information as to "who is being hired, who is putting up the money, and how much," notwithstanding the incidental inhibitory effect of this requirement. *United States* v. *Harriss,* 347 U.S. 612, 625–626. The Federal Corrupt Practices Act validly requires all political committees which accept contributions or make expenditures for the purpose of influencing national elections to keep exact accounts of all such contributions and to report publicly the names and addresses of all contributors as well as of persons to whom such expenditures are made (Act of February 28, 1925, Title III, Sections 302–305, 43 Stat. 1070–1072; 2 U.S.C. 241–244), though here, too, the requirement unquestionably imposes indirect restraints upon political expression. *Burroughs* v. *United States,* 290 U.S. 534. Likewise, the Foreign Agents Registration Act (Act of June 8, 1938, 52 Stat. 631–633; 22 U.S.C. 611, *et seq.*) validly requires agents of foreign principals to register with the Attorney General and to submit detailed information relating to the agency relationship. *United States* v. *Peace Information Center,* 97 F. Supp. 225, 261–263 (D. D.C.); see also *Viereck* v. *United States,* 318 U.S. 236, 241, where the constitutionality of the Act was assumed. The postal laws

(Act of August 24, 1912, Section 2, 37 Stat. 553; now 39 U.S.C. 233, 234) validly require the publishers of newspapers and magazines, as a condition of their use of second-class mail facilities, publicly to disclose the names of the owners of these publications and to mark with the word "advertisement" all contents the insertion of which has been paid for. *Lewis Publishing Co.* v. *Morgan,* 229 U.S. 228.

The unfair-labor-practice provisions of the National Labor Relations Act have led to certain valid restraints on speech. *National Labor Relations Board* v. *Virginia Elec. & Power Co.,* 314 U.S. 469; *National Labor Relations Board* v. *Falk Corp.,* 308 U.S. 453. Newspapers are subject to regulation in the public interest, notwithstanding possible incidental restrictive effects on their freedom to publish. *Associated Press* v. *National Labor Relations Board,* 301 U.S. 103, 130–133; *Associated Press* v. *United States,* 326 U.S. 1, 19–20; *Mabee* v. *White Plains Publishing Co.,* 327 U.S. 178, 184; *Oklahoma Press Publishing Co.* v. *Walling,* 327 U.S. 186, 192–193; *Lorain Journal* v. *United States,* 342 U.S. 143, 155–156. Radio broadcasting stations engaging in certain practices can be denied licenses without unlawfully entrenching on First Amedment rights, despite the indirect restraint upon speech which may result from such denials. *National Broadcasting Co.* v. *United States,* 319 U.S. 190, 226–227. The National Labor Relations Act, as amended by the Labor Management Relations Act of 1947 (Act of July 5, 1935, Section 9(h), as amended by the Act of June 23, 1947, Section 101, 61 Stat.

146)[41] validly denied the benefits of that Act to labor organizations unless each officer took an oath that he was not a member of the Communist Party. *American Communications Assn.* v. *Douds,* 339 U.S. 382, 389–412. The Hatch Act validly forbids officers and employees in the executive branch of the Federal Government from taking an active part in political campaigns (Act of August 2, 1939, Section 9, 53 Stat. 1148; 5 U.S.C. 118i), notwithstanding the obvious restraints imposed by this prohibition on such officers' and employees' freedom of speech and political expression. *United Public Workers* v. *Mitchell,* 330 U.S. 75, 94–104. The Court has also upheld a state statute requiring that associations, having an oath-bound membership, file with a state official sworn copies of their constitutions, oaths of membership, and the names of all officers and members. *Bryant* v. *Zimmerman,* 278 U.S. 63, 72–73.

In *National Association for the Advancement of Colored People* v. *Alabama,* 357 U.S. 449, an order of a state court for production of the names and addresses of all members and agents of the N.A.A.C.P. was held to be unconstitutional. See also *Bates* v. *City of Little Rock,* 361 U.S. 516; *Louisiana* v. *National Association for the Advancement of Colored People,* 366 U.S. 293. But the Court based its determination in the *Alabama* case on the ground that "we are unable to perceive that the disclosure of * * * petitioner's rank-and-file members has a substantial

[41] This provision has since been repealed. 73 Stat. 525.

bearing" on any interest of the State. 357 U.S. at 464. Significantly, the Court declared that *Bryant* v. *Zimmerman* "involved markedly different considerations in terms of the interest of the State in obtaining disclosure. * * * In its opinion [in *Bryant*], the Court took care to emphasize the nature of the organization [the Ku Klux Klan] which New York sought to regulate. The decision was based on the particular character of the Klan's activities, involving acts of unlawful intimidation and violence, * * * which the Court itself took judicial notice." *Id.* at 465.

In *Shelton* v. *Tucker,* 364 U.S. 479, the Court also held that a State may not constitutionally ask all teachers in State-supported schools to disclose every organization to which they had belonged or contributed regularly within the past five years. Even though disclosure might interfere with the right of association, the Court assumed that the State could ask certain teachers about all their organizational contributions and some teachers about all their associational ties pursuant to its power to inquire into the fitness and competence of teachers. *Id.* at 487. However, the Court held that the particular State requirement was invalid because it was indiscriminately broad and less drastic measures could accomplish the same objectives. Thus, that case, like the others described above, is grounded on the premise that the state and federal governments may require disclosure of information, despite some resulting limitation on rights protected by the First Amendment, when the requirement is necessary to further an important gov-

ernmental interest.[42] See also *Barenblatt* v. *United States,* 360 U.S. 109, 125–134; *Wilkinson* v. *United States,* 365 U.S. 399, 413–415; *Braden* v. *United States,* 365 U.S. 431, 435; *Gibson* v. *Florida Legislature Investigation Committee,* 372 U.S. 539, 544–546, 547, 557–558.

In all these and similar cases, the controlling consideration was not whether some indirect, incidental restraint on complete freedom of speech or of the press might result from the enforcement of the challenged law. That there would be some such restraint was apparent. The question was whether the objective of the legislature was one within its power to seek to effect; and, if so, whether the incidental restraint was appropriate and reasonable under all the circumstances, including the end sought to be achieved by the law, as well as the nature, impact, and scope of the restraint. As this Court described the problem in an analogous context in *American Communications Assn.* v. *Douds, supra,* 339 U.S. at 400:

> In essence, the problem is one of weighing the probable effects of the statute upon the free exercise of the right of speech and assembly against the congressional determination that political strikes are evils of conduct which cause substantial harm to interstate commerce and that Communist and others identified by § 9(h) pose continuing threats to that public interest when in positions of union leadership.

[42] Similarly, in *Talley* v. *California,* 362 U.S. 60, this Court held invalid a statute forbidding the distribution of anonymous handbills on the ground that it was indiscriminately broad. But the Court declined to pass on such an ordinance designed and limited to preventing fraud or other torts. *Id.* at 64.

> We must, therefore, undertake the "delicate and difficult task * * * to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

(*ii*) *The evil at which the Act strikes is one of the gravest that could befall the nation.*—The evil aimed at by the Hatch Act was the bad effect on government service of "political activity by government employees." *United Public Workers* v. *Mitchell, supra,* 330 U.S. at 95. The Regulation of Lobbying Act was aimed at the danger that "the voice of the people" might go unheard by Congress due to being "drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal." *United States* v. *Harriss, supra,* 347 U.S. at 625. The harm sought to be eliminated by the Corrupt Practices Act was "the corrupt use of money to affect elections." *Burroughs* v. *United States, supra,* 290 U.S. at 548. The injury at which the Foreign Agents Registration Act was directed was the "spreading [of] foreign propaganda" in this country by unidentified agents of foreign principals. *Viereck* v. *United States, supra,* 318 U.S. at 241. The evil aimed at by the non-Communist affidavit clause of the amended National Labor Relations Act was the obstruction of commerce due to "political strikes." *American Communications Assn.* v. *Douds, supra,* 339 U.S. at 387–389. In all these cases, the fact that incidental and indirect restraints upon "First Amendment freedoms" resulted from the steps taken by Congress to combat those evils was held not to invalidate

the legislative remedy adopted. However, the evils at which those statutes were directed, grave as they were, were relatively trivial compared to the evil at which this Act attempts to strike.

That evil is nothing less than the threatened destruction, through force, violence, and deceit, of our constitutional form of government, the loss of our national independence and of our cherished liberties, and the passing of the nation under the domination of a ruthless foreign dictatorship (Section 2). The world Communist movement, including its domestic manifestations, declared Congress in summing up the purposes of the Act, presents "a clear and present danger to the security of the United States and to the existence of free American institutions, and make[s] it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such worldwide conspiracy and designed to prevent it from accomplishing its purpose in the United States" (Section 2(15)).

It is obviously a matter of the gravest concern that there exists in this country such a highly organized conspiratorial group controlled and dominated by a foreign country or foreign organization, the principal efforts of which are directed to furthering the interests of that foreign country or organization to the detriment of the United States. As we have seen (pp. 36–54 above), Congress has for over thirty years regarded the threat to the United States represented

by the Communist movement as a legitimate subject of Congressional inquiry and legislation. See also *Internal Security Manual,* S. Doc. No. 47, 83d Cong., 1st Sess., pp. 216–218, where the many hearings held by committees of Congress investigating subversive activities from 1930 to 1953 are synopsized. The general power of Congress not only to conduct inquiries in this area, but to legislate on the basis of the information thus obtained, has been repeatedly recognized by this Court as well as by others. *E.g., Aptheker* v. *Secretary of State,* 378 U.S. 500, 509; *Kennedy* v. *Mendoza-Martinez,* 372 U.S. 144, 159–160; *Barenblatt* v. *United States,* 360 U.S. 109; *Galvan* v. *Press,* 347 U.S. 522, 529; *Carlson* v. *Landon,* 342 U.S. 524, 534–536; *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 590; *Dennis* v. *United States,* 341 U.S. 494; *American Communications Assn.* v. *Douds,* 339 U.S. 382, 387–389; *Lawson* v. *United States,* 176 F. 2d 49, 51–52 (C.A. D.C.), certiorari denied, 339 U.S. 843; *United States* v. *Josephson,* 165 F. 2d 82, 88–92 (C.A. 2), certiorari denied, 333 U.S. 838. Moreover, both this Court and the lower federal courts, have repeatedly recognized that the Communist Party is actively engaged in the world-wide Communist attempt to overthrow the Government of the United States. Therefore, the Court has repeatedly refused to treat it as an ordinary political party in considering the constitutionality of statutes or legislative investigations under the First Amendment.

Mr. Justice Jackson in the concurring portion of his opinion in *American Communications Assn.* v.

Douds, 339 U.S. 382, 423, pointed out that the Communist Party is different "from any other substantial party we have known, and hence [it] may constitutionally be treated as something different in law." He found that Congress, on the basis of material before it, could rationally have concluded that "The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate"; "The Communist Party alone among American parties past or present is dominated and controlled by a foreign government"; "Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal"; and "Every member of the Communist Party is an agent to execute the Communist program." *Id.* at 425, 427, 429, 431. See also Mr. Justice Jackson concurring in *Dennis* v. *United States,* 341 U.S. 494, 563–566.

In affirming the Smith Act convictions of the principal leaders of the Communist Party, Judge Learned Hand stated in *United States* v. *Dennis,* 183 F. 2d 201, 212–213 (C.A. 2), affirmed, 341 U.S. 494:

> One may reasonably think it wiser in the long run to let an unhappy, bitter outcast vent his venom before any crowds he can muster and in any terms he wishes, be they as ferocious as he will; one may trust that his patent impotence will be a foil to anything he may propose. * * * Here we are faced with something very different. The American Communist Party * * * is a highly articulated, well contrived, far spread organization, numbering thousands of ad-

> herents, rigidly and ruthlessly disciplined, many of whom are infused with a passionate Utopian faith that is to redeem mankind. * * * The violent capture of all existing governments is one article of the creed of that faith, which abjures the possibility of success by lawful means. * * * The question before us, and the only one, is how long a government, having discovered such a conspiracy, must wait.

Then, after reviewing the great world-wide Communist danger at the time of the indictment in 1948, Judge Hand went on (*id.* at 213):

> We do not understand how one could ask for a more probable danger, unless we must wait till the actual eve of hostilities. * * * [W]e shall be silly dupes if we forget that again and again in the past thirty years, just such preparations in other countries have aided to supplant existing governments, when the time was ripe. Nothing short of a revived doctrine of *laissez faire,* which would have amazed even the Manchester School at its apogee, can fail to realize that such a conspiracy creates a danger of the utmost gravity and of enough probability to justify its suppression.

Mr. Justice Frankfurter, speaking for the Court in *Galvan v. Press,* 347 U.S. 522, 529, stated:

> On the basis of extensive investigation Congress [found] in § 2(1) of the [Internal Security] Act that the "Communist movement * * * is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism,

> and any other means deemed necessary, to establish a Communist totalitarian dictatorship," and made present or former membership in the Communist Party, in and of itself, a ground for deportation. Certainly, we cannot say that this classification by Congress is so baseless as to be violative of due process and therefore beyond the power of Congress.

See also *Carlson* v. *Landon,* 342 U.S. 524, 535–537; *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 590. Subsequently, in concurring in *Sweezy* v. *New Hampshire,* 354 U.S. 234, Mr. Justice Frankfurter (joined by Mr. Justice Harlan) indicated that a fundamental distinction existed between investigation by a Congressional committee of a witness' political beliefs and into his connection with the Communist Party. "Whatever, on the basis of massive proof and in the light of history, of which this Court may well take judicial notice, be the justification for not regarding the Communist Party as a conventional political party, no such justification has been afforded in regard to the Progressive Party." *Id.* at 266.

The earlier history of this Court's attitude toward the Communist Party and the attempts of Congress to deal with it are described in *Barenblatt* v. *United States,* 360 U.S. 109, in which the Court upheld the authority of a Congressional committee to inquire whether a witness belonged to the Communist Party. Speaking for the Court, Mr. Justice Harlan said (*id.* at 128–129):

> * * * [*T*]*his Court in its constitutional adjudications has consistently refused to view*

> *the Communist Party as an ordinary political party, and has upheld federal legislation aimed at the Communist problem which in a different context would certainly have raised constitutional issues of the gravest character.* * * * To suggest that because the Communist Party may also sponsor peaceable political reforms the constitutional issues before us should now be judged as if that Party was just an ordinary political party from the standpoint of national security, is to ask this Court to blind itself to world affairs which have determined the whole course of our national policy since the close of World War II * * *. [Emphasis added.]

While these cases all deal with legislation concerning the Communist Party or its members, their reasoning is equally applicable to Communist-front organizations as they are defined in the Act. Congress found that Communist-action organizations, such as the Communist Party, secretly operate through Communist-front organizations. Indeed, by definition (Section 3(4)), these Communist-fronts are controlled by the Communist-action organizations and operate for the purpose of aiding and supporting these organizations. Thus, they are indirectly, but plainly, under the control, and carry out the purposes, of the world Communist movement just as much as Communist-action organizations.

Moreover, the function of Communist-front organizations in Communist strategy to overthrow democratic governments and their actual history demonstrate the serious danger they pose. See Appendix B below. Communist fronts were first organized to at-

tract additional support to Communist causes when the Communist movement saw that the workers in other countries were not ready to revolt after the Soviet Revolution. These fronts support various Communist positions, provide sources for the recruitment of new Party members, and give financial, legal, and other aid to the Party itself. Petitioner's operations fully conform to this pattern. See pp. 4–20, 34–35 above.

It is of course true that the danger from petitioner alone would be minimal. But, as we have seen, petitioner does not operate in isolation. It has been found to be an integral part of the world-wide Communist movement. Considering the problem as a whole, as Congress was entitled to do (*e.g.*, *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 606; *Wickard* v. *Filburn*, 317 U.S. 111, 127; *United States* v. *Darby*, 312 U.S. 100, 123), Communist-front organizations perform extremely important roles within the movement and thus contribute substantially to the danger posed by the movement to the security of the United States.

(*iii*) *In the light of the evil, the registration requirement does not invalidly restrict free speech, press, or association.*—In our survey of the cases in which the Court upheld legislation touching upon political association and expression of ideas (see pp. 114–120 above), "disclosure" cases are prominent. *United States* v. *Harriss*, 347 U.S. 612, 625 (Regulation of Lobbying Act); *Burroughs* v. *United States*, 290 U.S. 534 (Federal Corrupt Practices Act); *Lewis Publishing Co.* v. *Morgan*, 229 U.S. 288 (ownership-

disclosure requirements of the postal laws); *Bryant* v. *Zimmerman*, 278 U.S. 63 (New York Anti-Ku-Klux-Klan statute); cf. *Viereck* v. *United States*, 318 U.S. 236 (Foreign Agents Registration Act). The basic rationale underlying these decisions is that it is in the interest of both free speech and free association that Congress and the public be adequately and correctly informed, where non-disclosure poses serious dangers to the public interest.[42]

In light of our knowledge of the evils of the world Communist movement (see pp. 121–126 above), there would seem to be little doubt that the accepted device of registration and disclosure properly may be applied to the Communist Party and to its secret subsidiary front organizations, now that the Party has been found, after full hearing, to be directed and controlled by the Soviet Union and to be operating primarily to advance the objectives of the world Communist movement and its subsidiaries have been found to be instrumentalities to carry out the Party's purposes. See Sutherland, *Freedom and Internal*

[42] In addition to judicial approval, the principle of registration and disclosure has been widely recognized by legal writers as a constitutional and desirable remedy against potential abuses of political freedoms. See, *e.g.*, *To Secure These Rights*, Report of the President's Committee on Civil Rights (1947), p. 164; Smith, *Democratic Control of Propaganda Through Registration and Disclosure*, 6 Pub. Opin. Quarterly 27; Institute of Living Law, *Combating Totalitarian Propaganda: The Method of Suppression*, 37 Ill. (Northwestern Univ.) L. Rev. 193, 213; Ernst and Katz, *Speech: Public and Private*, 53 Colum. L. Rev. 620, 626; Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs*, 47 Mich. L. Rev. 181, 204–213.

Security, 64 Harv. L. Rev. 383, 406–407. Congress, on the basis of extensive investigations over a period of many years (see pp. 36–51 above), had concluded that much of the danger from Communist activity in the United States is the result of its secrecy. Registration, which means in effect disclosure, was, therefore, an obviously reasonable method of coping with this grave problem. If the leaders of the Communist Party may be imprisoned for conspiring to advocate the overthrow of the Government by force and violence (*e.g., Dennis* v. *United States,* 341 U.S. 494), certainly the Party and its subsidiaries may be compelled to register, disclose their officers, and give a financial accounting. Whatever diminution of their influence or effectiveness results from this publicity—including a possible falling-off in "peaceful" and "non-seditious" activities—is a valid consequence of the government's and the public's right to be informed about such organizations' activities and connections. Their seditious connection with the Soviet Union plainly warrants the kind of disclosure Congress has required.

Petitioner, however, contends (Br. 106–108) that because it has legitimate objectives, namely, the defense of aliens and the promotion of changes in our immigration laws, it cannot be required to register. No one would suggest that every immediate objective of the Communist Party itself is illegal. It may, as part of its appeal for popular support, favor and work for low-cost public housing, non-discrimination by reason of race, and many other things. The Party, however, urges such objectives because in its judgment

they will help it to its final objective—overthrow of the government of the United States. Similarly, Communist-front organizations may carry out many legitimate and desirable activities, but an organization may not be ordered to register because of such conduct. On the contrary, such activities are relevant only insofar as they constitute evidence concerning the relationship of the organization to the Communist movement. For the Act requires the Board to find, before ordering an organization to register as a Communist front, that it was controlled by, and primarily operates to give support to a Communist-action organization, which in turn was controlled by and supports, the government controlling the world Communist movement. Section 2 describes the purpose of the world Communist movement as, "by treachery, deceit, infiltration * * * espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship * * * throughout the world" (Section 2(1)). On the basis of convincing evidence (see pp. 60–97 above), the Board concluded that petitioner came within this definition of a "Communist-front organization" (R. 64–66).

Thus, contrary to petitioner's contention, it is clear that the Act does not attempt to suppress, regulate, or even require disclosure by organizations whose purpose is completely peaceful and harmless. Rather, it requires disclosure from organizations, like petitioner, whose *present activity* is for the purpose of advancing the objectives of the world Communist movement. While such organizations' activities may

be peaceful and not in violation of any criminal law at a particular time, we submit that Congress has the constitutional power to require disclosure from such organizations which are actively working for overthrow of the Government and which, together with the world Communist movement as a whole, produce a serious danger that their purpose will be achieved."

Petitioner and the *amicus* also contend (Pet. Br. 102–105; A.C.L.U. Br. 39–41) that the Court should apply the clear-and-present-danger test in determining the constitutionality of the registration requirement. However, they cite no cases, and we know of none, where this standard has been applied to incidental restraint on rights protected by the First Amendment. More pointedly, this standard has not been applied either in the *Communist Party* case or any of the other disclosure cases decided by this Court. The cases which petitioner and the *amicus* cited involved criminal prosecutions for,[45] or other direct restraints[46] on, speech or assembly. In contrast, this Act merely requires registration.

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[44] The *amicus* states (A.C.L.U. Br. 38–39) that the Act is unconstitutional because it limits First Amendment rights and is not drawn as narrowly as possible to remedy the supposed evil. In fact, however, the statute is coextensive with the evil—registration of organizations which are controlled by other organizations which in turn are controlled by the government controlling the world Communist movement.

[45] *E.g.*, *DeJonge* v. *Oregon*, 299 U.S. 353; *Schenck* v. *United States*, 249 U.S. 47; *Herndon* v. *Lowry*, 301 U.S. 242.

[46] *Thomas* v. *Collins*, 323 U.S. 516 dealt with the wholly different problem resulting from a state requirement that individuals register as a condition of exercising their normal righ-

Whatever restraint does result from the requirement of registration is the indirect result of a statute directed toward a broader and more dangerous problem. And although petitioner claims that it is entitled to a special rule on the ground that the registration order will destroy it as an organization, many of the cases in which the clear-and-present-danger standard has not been applied, including the *Communist Party* case itself, involved equally serious consequences. See also, *e.g., National Association for the Advancement of Colored People* v. *Alabama, supra; Bates* v. *Little Rock, supra.*

The *amicus* contends (A.C.L.U. Br. 10), citing *Wieman* v. *Updegraff*, 344 U.S. 183, that the statute is unconstitutional because it brands members of Communist-front organizations who have no knowledge of its Communist character. First, this is a complete misreading of the statute: the Act labels only the organization itself and does not even require the disclosure of the names of members. Second, any

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to make public speeches enlisting support for a lawful and peaceful movement. The Court made clear that the vice of the statute was that the requirement was imposed directly on speech rather than on activities which might incidentally include speech (323 U.S. at 540):

"Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed." Moreover in *Thomas* v. *Collins*, there was no problem of sedition, subversion, or of a domestic organization controlled by a foreign dictatorship and dedicated to forcible overthrow of this Government. See Sutherland, *Freedom and Internal Security*, 64 Harv. L. Rev. 383, 403–404.

members who did not previously know of the control of the organization by the Communist Party, could readily resign upon the Board's determination but before registration, and thus avoid any stigma that might attach to continued membership after learning petitioner's true character.

2. The registration provisions do not violate the First Amendment or the due process clause of the Fifth Amendment on the ground of vagueness

a. The definition of "Communist-front organization" in Section 3(4)

Petitioner contends (Br. 108–109) that the registration provisions of the Act violate the First Amendment and the due process clause of the Fifth Amendment because they depend on the definition of Communist-front organization in Section 3(4), which, it alleges, is unconstitutionally vague. More specifically, citing this Court's recent decisions in *Cramp* v. *Board of Public Instruction,* 368 U.S. 278, and *Baggett* v. *Bullitt,* 377 U.S. 360, petitioner states that the vagueness of the aid component of Section 3(4) is demonstrated by the fact that the Board found "legal defense of the foreign born" (Br. 109) to satisfy the statute.

This contention, like petitioner's contention concerning freedom of speech and assembly discussed above, is foreclosed by this Court's holding in the *Communist Party* case. There, the Communist Party contended that the definition of Communist-action organization was unconstitutionally vague. It pointed [47] to the "objectives" component of the defini-

[47] See Brief for Petitioner, No. 12, Oct. Term 1960, pp. 30–31, 85.

tion which required proof that the alleged Communist-action organization was operating "primarily to advance the objectives of [the] world Communist movement referred to in Section 2" (Section 3(3)). Section 2(1) stated that the movement's "purpose * * * is by treachery, deceit, infiltration * * * espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship * * * throughout the world." The Court specifically noted the Party's contention. 367 U.S. at 71, 82. Nevertheless, despite a lengthy 115-page opinion which discussed numerous issues, the Court "carefully considered" this contention along with several other constitutional claims and summarily rejected it as not requiring "detailed discussion." *Id.* at 115.

The aid component of the definition of Communist-front organizations is basically similar to the objectives component relating to Communist-action organizations. Both definitions require proof of Communist control and then require in the "objectives" and "aid" components that the organization be shown to serve its master. The requirement that the organization be "primarily operated for the purpose of giving aid and support to a Communist-action organization" (Section 3(4)) is just as clear as the requirement that a Communist-action organization operate primarily to establish a Communist totalitarian dictatorship by any means deemed necessary (Sections 2(1), 3(3)).

Second, independent of the *Communist Party* case, the aid component of Section 3(4) is not unconsti-

tutionally vague. It is well established that "[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453. On the other hand, this Court has allowed Congress great latitude in delegating power to administrative agencies on the basis of standards at least as general as that involved here. In *American Power Co.* v. *Securities and Exchange Commission*, 329 U.S. 90, 104–105, the Court held constitutional a provision giving the Commission power to insure that the corporate structure or continued existence of any company in a holding company system does not "unduly or unnecessarily complicate the structure" or "unfairly or inequitably distribute voting power among security holders." The Court stated (*id.* at 105):

> The legislative process would frequently bog down if Congress were constitutionally required to appraise beforehand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation. Necessity therefore fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules; it then becomes constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority.

Similarly, in *Sunshine Coal Co.* v. *Adkins*, 310 U.S. 381, 399–400, the Court said:

> The fact that many instances may occur where its [the definition of bituminous coal] application may be difficult is merely to emphasize the nature of the administrative problem and the reason for the grant of latitude by the Congress. The difficulty or impossibility of drawing a statutory line is one of the reasons for supplying merely a statutory guide. * * * That guide is sufficiently precise for an intelligent determination of the ultimate questions of fact by experts.

While stricter standards may perhaps be necessary for delegation of power outside the area of economic regulation, nevertheless these same basic considerations apply. The Act, as this Court held in the *Communist Party* case, "is a regulatory, not a prohibitory, statute." 367 U.S. at 56. And Section 7 does no more than require registration and disclosure of officers and contributors.

The statute here provides adequate standards. It defines a Communist-front organization as one both controlled by a Communist-action organization (as already found by the Board) and "primarily operated for the purpose of giving aid and support to a Communist-action organization" (Section 3(4)). Pursuant to this definition, the Board did not, as petitioner suggests, find that petitioner aided and supported the Communist Party by merely defending the foreign born. Instead, it found that members of the Communist Party ran and operated petitioner

as representatives of the Party and used petitioner to serve the purposes of the Party by defending Party members and attacking legislation which hindered Party activities. See the Statement above, pp. 4–20.

Petitioner's reliance on *Cramp* and *Baggett* is misplaced. First, in those cases, this Court held that oaths requiring state employees to swear that they had never given aid or support, etc., to the Communist Party or aided in the commission of any act to overthrow the government of the United States or the State were unconstitutionally vague. While those cases did not involve criminal statutes, they did concern oaths, the false swearing of which would subject a person to a criminal penalty. Since, as a consequence, persons could be subjected to criminal punishment on the basis of activities which, as far as they could tell, were not inconsistent with their oaths, this Court properly relied on cases involving criminal statutes. See 368 U.S. at 283–284, 287–288.

Second, this Court emphasized in *Cramp* that the oath said "nothing of membership or affiliation with the Communist Party, past or present." 368 U.S. at 286. Indeed, in both *Cramp* and *Baggett,* the Court said that the oath might be construed to cover incidental support of the Party or its members, such as voting for a Party candidate, teaching Party members in school, and the like. *Ibid.*; 377 U.S. at 368. In marked contrast, Section 3(4) requires proof that any organization alleged to be a Communist front is controlled by, and "is primarily operated for the pur-

pose of giving aid and support to a Communist-action organization."[48] Thus, while the innocent activities noted in *Cramp* or *Baggett* may in some conceivable circumstances constitute evidence, the statute cannot be applied to them without much more. It cannot be applied to organizations or individuals who merely happen to agree with certain views or activities of the Party or even give the Party substantial support. Instead, the statute both in terms and as applied here, covers only organizations which are proved to be instrumentalities of Communist-action organizations like the Communist Party.

b. The evidentiary criteria in Section 13(f)

The *amicus* contends (A.C.L.U. Br. 43–50) that the factors which the Act directs the Board to consider in determining whether an organization is a Communist-front organization (Section 13(f)) are also unconstitutionally vague.[49] Petitioner has not

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[48] Thus, contrary to the statement of the *amicus* (A.C.L.U. Br. 47, note 63), the organization must have *scienter* in the sense of knowingly 'carrying out the purposes of a Communist-action organization such as the Communist Party.

[49] Section 13(f) of the Act provides:

"In determining whether any organization is a 'Communist-front organization', the Board shall take into consideration—

"(1) the extent to which persons who are active in its management, direction or supervision whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

"(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

raised this contention, and we think it inappropriate for an entirely new constitutional issue to be injected into this case by an organization which is not a party.

A similar contention was made in the *Communist Party* case, directed at the evidentiary factors in Section 13(e) which relate to Communist-action organizations.[50] The factors in Section 13(e) are just as general as those in Section 13(f). Nevertheless, the Court rejected this contention, like the other arguments concerning vagueness, without discussion. 367 U.S. at 115.

Finally, independent of this Court's decision in the *Communist Party* case, Section 13(f) is constitutional. That Section provides merely that the Board must "take into consideration" the four evidentiary matters. As this Court said in the *Communist Party* case (367 U.S. at 14; cf. *id.* at 58, 61), the items listed in Section 13(f) are simply relevant guides in determining whether an organization is a Communist-front organization. The exclusive "test" for making that determination is supplied by the definition of such an organization in Section 3(4). *viz.*, whether it is substantially directed, dominated, or controlled by a Communist-action organization and operated primar-

"(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

"(4) the extent to which the position taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2."

[50] See Brief for Petitioner, No. 12, Oct. Term 1960, pp. 139–146.

ily to give aid and support to that organization. This Court repeatedly has upheld as not unduly vague, similarly generalized "guides" which administrators are to consider in applying the ultimate statutory test. See, *e.g., Hampton & Co.* v. *United States,* 276 U.S. 394; *Mulford* v. *Smith,* 307 U.S. 38; *Sunshine Coal Co.* v. *Adkins,* 310 U.S. 381; *Opp Cotton Mills* v. *Administrator,* 312 U.S. 126; *Yakus* v. *United States,* 321 U.S. 414; *American Power Co.* v. *Securities and Exchange Commission,* 329 U.S. 90; *Fahey* v. *Mallonee,* 332 U.S. 245; *Lichter* v. *United States,* 334 U.S. 742. For example, in *Hampton & Co.* v. *United States, supra,* 276 U.S. at 401–402, the Court upheld a Congressional direction to the President, in adjusting tariffs, to "take into consideration," "in so far as he finds it practicable," a variety of economic matters—including the catch-all "any other advantage or disadvantages in competition."

The *Opp Cotton Mills* case, *supra,* is particularly pertinent. There, the Court upheld the requirement in the Fair Labor Standards Act of 1938 that, in fixing minimum wage rates, the Wages and Hours Administrator "consider among other relevant factors" certain economic considerations. 312 U.S. at 136. "It is urged," said the Court, "that the statute does not prescribe the relative weight to be given to the specified factors or the other unnamed 'relevant factors.' It is said that this * * * leave[s] the function which the committee and Administrator are to perform so vague and indefinite as to be practically without any Congressional guide or control." 312 U.S. at 143–144.

Rejecting this argument, the Court said (*id.* at 145–146):

> The fact that Congress accepts the administrative judgment as to the relative weights to be given to these factors in each case when that judgment in other respects is arrived at in the manner prescribed by the statute, instead of attempting the impossible by prescribing their relative weight in advance for all cases, is no more an abandonment of the legislative function than when Congress accepts and acts legislatively upon the advice of experts as to social or economic conditions without reexamining for itself the data upon which that advice is based.

3. Petitioner was not denied procedural due process because it was not allowed to relitigate whether the Communist Party is a Communist-action organization

Petitioner contends (Br. 110–111) that the Act violates the due process clause of the Fifth Amendment because petitioner "was bound by the Board's finding, made in the proceeding against the Communist Party, that the Communist Party is a Communist-action organization." We submit that this contention is without merit.

The Court of Appeals for the District of Columbia Circuit has repeatedly considered and rejected this argument. *National Council* v. *Subversive Activities Control Board*, 322 F. 2d 375, 392; *Jefferson School of Social Science* v. *Subversive Activities Control Board*, 331 F. 2d 76, 82; *Albertson* v. *Subversive Activities Control Board*, 332 F. 2d 317, pending on petition for

a writ of certiorari, No. 265, this Term.[51] As Judge Bazelon stated in his concurring opinion in *Weinstock* v. *Subversive Activities Control Board,* 331 F. 2d 75, 76 (C.A. D.C.):

> I believe that due process does not demand relitigation of the Party's status in the present case because (a) the organization here affected by the Party's status has been found to be substantially controlled by the Party, (b) the Party argued the question of its status in a 14-month 14,000 page hearing and the Supreme Court affirmed the Board's finding, and (c) there is no indication that the organization here affected by the Party's status could produce evidence which would throw additional light on that matter.

["D]ue process of law depends on circumstances. It varies with the subject-matter and the necessities of the situation." *Moyer* v. *Peabody,* 212 U.S. 78, 84. The Subversive Activities Control Act establishes specific procedures for determining which organizations fall within the class of organizations required to register. These procedures involve full hearings before an expert administrative tribunal and judicial review of its determinations. The Communist Party was found, pursuant to these procedures, to be a Communist-action organization. The tortuous history of the original determination (see the *Communist Party* case, 367 U.S. at 19–22) demonstrates the total impracticability of allowing each

[51] The *Albertson* case involved review of an order by the Board that a particular member of the Party register since the Party itself had not done so (see Section 8).

Communist-front organization to relitigate (14 have been determined by the Board up to the present [52]) that case before it can itself be required to register.

Beyond this, a Communist-front organization must be found to be controlled by, and operate primarily to give aid and support to, a Communist-action organization. Surely, the Communist Party can be fairly said to have represented organizations which are in effect its subsidiaries in the litigation resulting in the final order to it to register. As this Court stated in *Hansberry* v. *Lee*, 311 U.S. 32, 42–43, "It is familiar doctrine of the federal courts that members of a class not present as parties to the litigation may be bound by the judgment where they are in fact adequately represented by parties who are present * * *; or where the interest of the members of the class, some of whom are present as parties, is joint, or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter." Accord, *Restatement, Judgments* (1942), § 86. Thus, a stockholder is bound by a judgment in which the corporation was a party on the ground that "as stockholder he has voluntarily assumed a corporate relationship which is subject to the local regulatory power, in the exercise of which the procedure has been attached, as an incident, to his membership in the corporation * * *. [T]he benefits of member-

[52] All the proceedings before the Board in which an organization has been found to be a Communist-front organization are described in Appendix C below.

ship carry with them the risk that the corporation may stand in judgment for him." *Christopher* v. *Brusselback,* 302 U.S. 500, 504, and the cases therein cited. *A fortiori,* here, it is proper to deem the Communist-front organizations bound by the judgment determining the character of the organization which controls them. And regardless of the rule in the absence of statute, at least, Congress' determination to have the organization litigate the applicability of the Act for all its subsidiary organizations is not so unfair as to violate due process.

Petitioner also suggests (Br. 110–111) that the Act is invalid since, if an organization is found to come within the Act, the statute applies indefinitely. The non-Communist affidavit provision in the Labor Management Relations Act applied specifically to all members of the Communist Party. This Court upheld its constitutionality despite the fact that only Congress could remove the Party from the provisions of the statute. *American Communications Assn.* v. *Douds,* 339 U.S. 382. Similarly, Congress could reasonably decide that since the Communist movement is a grave danger to national security and since its operations are extremely difficult to trace because of its secret and conspiratorial nature, all organizations which are found to satisfy the standards of the Subversive Activities Control Act and which refuse to register should continue under the disabilities of the Act.

In any event, Congress has provided a means by which an organization can relitigate its status under the Act. Section 13(b) allows an organization regis-

tered under the Act to apply to the Attorney General as often as once a year to cancel its registration and, if he refuses, the organization "may petition the Board for a redetermination of its amenability to the registration requirements of the Act, pursuant to a hearing which, again, is subject to judicial review." *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 87. Consequently, "[f]ar from attaching to the past any ineradicable actions of an organization, the application of the registration section is made to turn upon continuingly contemporaneous fact; its obligations arise only because, and endure only so long as, an organization presently conducts operations of a prescribed character." *Ibid.* As this Court stated in the *Communist Party* case, 367 U.S. at 87, the Act offers "adequate means of relief" "[i]f the Party should at any time choose to abandon" the activities which made it subject to the Act.

It is true that Section 13 is not now available to the Communist Party because it has refused to register. This, however, was the Party's choice. But even if Congress were constitutionally required to provide the Party a means to relitigate the 1953 determination and the remedy in Section 13 were inadequate because it is confined to organizations which have registered, it is the Party which would have been denied a constitutional right. The Party could vindicate such right by bringing an action challenging the present applicability of the Act. We have shown that Communist-front organizations could not challenge the

original determination of the Board concerning the character of the Party and the applicability of the Act. Equally, such organizations are bound by the Party's decision not to relitigate the 1953 decision.

4. The Board's definition of "organization" did not violate the First Amendment or the due process clause of the Fifth Amendment

As we have discussed above (pp. 93–97), the Board, following the definition of "organization" in Section 3(2) of the Act, considered the local committees as part of a single organization with the American Committee. The Board reasoned that the American Committee and the local committees "are associated together for joint action" and "constitute a voluntary association" (R. 27). Petitioner contends (Br. 53–56), that the Board's conclusion that the American Committee and local committee were one organization, without requiring proof that the American Committee controlled the local committees, violates the First Amendment and the due process clause of the Fifth Amendment.

Since petitioner did not raise this contention in the petition for a writ of certiorari, the Court, under its settled practice, will not consider it. See Rules 23 and 40 of the Revised Rules of this Court. *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, 177; *Crown Cork & Seal Co.* v. *Ferdinand Gutmann Co.*, 304 U.S. 159; *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350; *Trailmobile Co.* v. *Whirls*, 331 U.S. 40.

In any event, the contention is without merit. Petitioner argues that the imposition of vicarious liability

on the local committees interferes with freedom of association. It reasons (Br. 54) that "an individual cannot feel safe in joining an organization no matter how sure he is of its purity; he must now have the same confidence about all other organizations with which [he] may possibly cooperate * * *." But the Act imposes no disabilities on individuals for activities prior to the time the final order to register has been upheld by the courts. If they continue as members after that time, they are on notice concerning the character of the organization to which they belong.

Moreover, even if we assume *arguendo* that a broad reading of "organization" might raise a substantial constitutional issue under the First Amendment, none is raised here. The Board has found the American Committee and the local committees to be part of a single organization on the basis of evidence which shows that they formed an integral whole. As the court of appeals characterized the evidence, the local committees "were intermeshed with the national group, not only in policies but in operation" (R. 77). Moreover, the evidence showed as to every local group concerning which evidence was introduced that it was run by members of the Communist Party (see pp. 11–13 above). Consequently, the Board found that "the effective management, direction, and supervision of the local branches of [petitioner] are substantially and primarily performed by and are under the control of members and representatives of the Communist Party" (R. 35).

Petitioner contends that the Board's interpretation violated procedural due process protected by the Fifth Amendment because it treated the American Committee and the local committees as a single organization in making its findings as to the character of petitioner and because the order to register covers the local committees. As we have emphasized, however, the activities of the American Committee and the local committees were so interrelated that the Board could reasonably consider them together, both in making its findings as to the character of petitioner and in determining the scope of its order to register. Moreover, petitioner's contention that the local committees cannot be required to register since they were not made separate parties to the proceeding, would at most excuse them from registering; it would not excuse petitioner.

5. The disclosure provisions of the Act do not violate the self-incrimination clause of the Fifth Amendment

Petitioner contends (Br. 112–113) that the registration provisions are unconstitutional because they violate the self-incrimination clause of the Fifth Amendment. Petitioner's contention is two-fold: first, that the privilege against self-incrimination of its own officers is violated; second, that the privilege of the officers of the Communist Party was violated by the order to register in the *Communist Party* case; that the Act therefore was invalid as applied to the Communist Party; and that since the Communist-front provisions depend upon the Communist-action provi-

sions, the Act is *ipso facto* invalid as applied to Communist-front organizations like petitioner.

Since this contention was not raised below[53] this Court would consider it only in exceptional circumstances: *E.g., Duignan* v. *United States,* 274 U.S. 195, 200; *Husty* v. *United States,* 282 U.S. 694, 701–702; *Lawn* v. *United States,* 355 U. S. 339, 362–363, note 16; *California* v. *Taylor,* 353 U.S. 553, 557, note 2. There are no exceptional circumstances here. Indeed, petitioner's argument, as we will show, would require overruling of the decision in the *Communist Party* case. It is particularly inappropriate, we submit, to consider overruling a recent determination by this Court where the litigant has not even raised the issue below.

a. This Court's decision in the Communist Party *case is controlling*

In the *Communist Party* case this Court, in upholding the order to register, ruled that the Party's claim that registration would violate its officers' privilege against self-incrimination was premature. 367 U.S. at 105–110. The Court noted that the privilege must be claimed by the particular individuals seeking its protection; that there was no indication that Party leaders would claim it; and that, if the privilege were claimed, it might be honored by the Attorney General. Since the registration provisions relating to Com-

[53] Moreover, in its petition for a writ of certiorari, petitioner's only reference (Pet. 25, note 15) to the self-incrimination clause of the Fifth Amendment is to ask this Court in a footnote to overrule the *Communist Party* case.

munist-front organizations are identical to, and operate in the same way as, the provisions concerning Communist-action organizations, the *Communist Party* case is controlling.

Petitioner suggests that the fact that the Party has not registered shows that this Court erred in the *Communist Party* case. It points to the decision in *Communist Party* v. *United States*, 331 F. 2d 807 (C.A. D.C.), certiorari denied, 377 U.S. 968, where the Party's conviction for failure to register was overturned on the ground that, in refusing to register, the Party's officers had properly invoked their privilege under the Fifth Amendment. However, the issue whether the Party can be convicted for failure to register is still in litigation and its ultimate determination is uncertain. But even if the Party's failure to register ultimately is upheld because of its officers' rights under the Fifth Amendment, that in no way undermines this Court's earlier decision that the issue was then premature. The decision of the court of appeals overturning the Party's criminal conviction demonstrates the importance of determining the validity of a claim of privilege on the basis of the concrete facts in a particular case.

The suggestion that petitioner cannot be ordered to register until the Party registers is plainly erroneous. The statutory requirement that a Communist-front organization register requires only a finding that it is controlled by, and primarily operates to give aid and support to, a Communist-action organization. The Act does not require that the action organization actually register before the front organization can be

ordered to do so. For an organization poses a danger to the national security if it is a subsidiary of a Communist-action organization, *i.e.*, of an organization controlled by the foreign government controlling the world Communist movement and operating primarily to carry out the objectives of that movement. The danger is in no way lessened if the Communist-action organization does not register, disclose its officers and members, and give a financial accounting; if anything, the action organization's refusal to do so increases the danger. And finally, we do not understand how the Party's refusal to register based on the Fifth Amendment can in any way affect petitioner's own rights or those of its officers under this same Amendment.

b. Even if the Communist Party *case is not controlling, the Fifth Amendment has not been violated*

This Court's determination in the *Communist Party* case is firmly based on numerous earlier decisions of this Court which demonstrate that petitioner's claims are premature. Moreover, even if petitioner can raise Fifth Amendment objections at this time, we believe that those contentions are without merit.

(*i*) *The present case is not a proper vehicle for the litigation of the self-incrimination issues.*—Assuming *arguendo* that the officers who will eventually have the duty to effect the registration of petitioner will be personally privileged o refuse, or at least to assert and litigate a claim of privilege, that fact does not render either the registration provisions of the Act or the registration order invalid. At the present time, the self-incrimination issue is entirely hypo-

thetical since no officers have yet been called upon to register.

First, it is settled that the privilege against self-incrimination "is essentially a personal one, applying only to natural individuals." *United States* v. *White*, 322 U.S. 694, 698. It may be invoked neither by a corporation (*Wilson* v. *United States*, 221 U.S. 361; *Essgee Co.* v. *United States*, 262 U.S. 151, 155–156; *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 205; *Curcio* v. *United States*, 354 U.S. 118, 122) nor by an unincorporated organization or association, such as petitioner (*United States* v. *White, supra*, 322 U.S. at 699). The order under review is directed against petitioner alone, not against any natural individual, and petitioner alone is before the Court at this time. While it is true that artificial entities such as corporations and unincorporated associations can act only through individuals, the simple fact is that only natural individuals are protected by the privilege and no such individual is a party to this case.

Second, the privilege against self-incrimination is a privilege which must be personally and explicitly claimed. *Quinn* v. *United States*, 349 U.S. 155, 162; *Emspak* v. *United States*, 349 U.S. 190, 194; *Rogers* v. *United States*, 340 U.S. 367, 370; *Smith* v. *United States*, 337 U.S. 137, 150; *United States* v. *Monia*, 317 U.S. 424, 427; *United States* v. *Murdock*, 284 U.S. 141, 148; *Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 113. It is "merely an *option of refusal*, not a prohibition of inquiry" (emphasis added). VIII Wigmore, *Evidence* (3d ed., 1940), § 2268.

There has been no claim of privilege thus far, and there may never be one. Since this Court does not anticipate constitutional issues (*Peters* v. *Hobby*, 349 U.S. 331, 338), petitioner's attempt to litigate the self-incrimination issue in this case, before it is raised, would clearly seem to be premature. Cf. *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U.S. 419, 443. The question of the availability of the privilege to an officer or officers of petitioner will not arise until the order of the Board becomes final and the duty to bring about petitioner's registration comes into being. If at that time a privilege is claimed, it can then be decided.

Third, it cannot be assumed at this time that a claim of privilege will inevitably be made when petitioner is confronted by the statutory requirement that it register. While the Communist Party did claim the privilege against self-incrimination, it is not certain that officials of petitioner will also do so. Although, as the Board found, petitioner is controlled by the Party, different considerations may very well be present. For example, while petitioner operates openly except for concealing its connection with the Communist Party, the latter has frequently been conspiratorial and secret. Moreover, registration as a front organization, unlike as an action organization, does not require disclosure of ordinary members. Since, as shown by the record here (*e.g.*, A.G. Ex. 34; R. 22), petitioner publicly lists its officers, they may not claim the privilege.

Further, even if it be assumed that a claim of privilege will be made by every one of the officials of peti-

tioner having the duty of effecting petitioner's registration, and that such a claim must of necessity be upheld, this would not render either the registration provisions of the Act or the order of the Board invalid. The order to register should still be upheld in this proceeding. "[T]he utmost result would be that the statute and order would be unenforceable" whenever opposed by a valid claim of the privilege. *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531, 550 (C.A. D.C.), affirmed, 367 U.S. 1. The distinction is important for at least two reasons. First, the non-enforceability of the order could be removed by a grant of immunity from prosecution for any offense of which a prospective registerer of petitioner might fear to incriminate himself. See *Brown* v. *Walker*, 161 U.S. 591; *Ullman* v. *United States*, 350 U.S. 422.[54] Second, the non-enforceability of the order to register would not affect the disabilities which come into being when the order to register becomes final; these have a vitality separate and apart from the registration process and do not depend upon actual registration.

(*ii*) *In any event, the officers of petitioner having the duty under the Act and regulations to effect the registration will not be personally privileged to refuse to do so.*—If the Court should reject our argument

[54] It is probable that such a grant of immunity would require a new statute. But the fact that new legislation would probably be required to authorize the granting of immunity in connection with registration proceedings does not affect our argument that, because of the possibility of granting immunity, the order is not constitutionally invalid merely because it might be unenforceable without such a grant.

that it need not and should not now pass upon the issue of whether an officer of the petitioner can validly claim the privilege as a ground for not registering the petitioner, and should undertake to determine that issue in this proceeding, our position would be that the privilege is not available to such officers.[55] In *United States* v. *White*, 322 U.S. 694, the Court held, not merely that an organization or association cannot invoke the privilege against self-incrimination, but that an officer of an organization or association who has custody of its records, if called upon to produce them pursuant to a subpoena, may not lawfully refuse to do so even if they would tend to incriminate him personally. "[T]he papers and effects which the privilege protects," this Court said, "must be the private property of the person claiming the privilege, or at least in his possession in a purely personal capacity. * * * But individuals, when acting as representatives of a collective group, cannot be said to be exercising their personal rights and duties nor be entitled to their purely personal privileges. Rather they assume the rights, duties, and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations. In their official capacity, therefore, they have no privi-

[55] We are not quite sure how such a determination can be made without considerable information about all the particular officers who will be responsible, under the Act and regulations (see Appendix A, p. 173 below), for filing petitioner's registration statement. As we discuss below (pp. 159-161), many of petitioner's officers may not properly claim the privilege since *in fact* there is no possibility that the disclosures from their filing the statement would incriminate them.

lege against self-incrimination. And the official records and documents of the organization that are held by them in a representative rather than in a personal capacity cannot be the subject of the personal privilege against self-incrimination, even though production of the papers might tend to incriminate them personally." *Id.* at 699. Accord, *Wilson* v. *United States,* 221 U.S. 361, 376–385; *Wheeler* v. *United States,* 226 U.S. 478, 489–490; *Essgee Co.* v. *United States,* 262 U.S. 151, 158; *Curcio* v. *United States,* 354 U.S. 118, 122–123; *McPhaul* v. *United States,* 364 U.S. 372, 380.

The rationale of the *White* case is equally applicable, we submit, to the case at bar. Cf. Meltzer, *Required Records, The McCarran Act, and the Privilege Against Self-Incrimination,* 18 U. of Chi. L. Rev. 687, 720. This Court has, in fact, specifically cited the *White* case as authority for the proposition that one of the Communist Party's own officers on the local level—the Treasurer of the Communist Party of Denver—"had no privilege with respect to the books of the Party, whether it be a corporation or an unincorporated association." *Rogers* v. *United States,* 340 U.S. 367, 371–372. But see *Communist Party* v. *United States,* 331 F. 2d 807 (C.A. D.C.), certiorari denied, 377 U.S. 968.

The rationale of *White* is not inapplicable on the ground that in *White* physical records were in question, while the issue here is the compulsory submission of a registration statement containing the names and addresses of officers and a financial accounting.

It is immaterial whether the officer is required to produce organization records or to file an organization report; the critical consideration is that the officer cannot refuse to submit documents on behalf of his organization because of his claim that they will incriminate him individually. This is made clear by *Baltimore & Ohio R.R.* v. *Interstate Commerce Commission,* 221 U.S. 612, where this Court applied the principle enunciated in *Wilson* v. *United States, supra,* to hold that an officer of a railroad could not rely upon his personal privilege against self-incrimination to justify his failure to submit to the Commission carrier reports required by the Interstate Commerce Act. The Court stated: "[W]ith regard to the keeping of suitable records of corporate administration, and the making of reports of corporate action, where these are ordered by the Commission under the authority of Congress, the officers of the corporation, by virtue of the assumption of their duties as such, are bound by the corporate obligation and cannot claim a personal privilege in hostility to the requirement." 221 U.S. at 623.

Second, here, unlike in *Baltimore & Ohio R.R.,* petitioner is not required to disclose entirely new material by means of a report. Most or all of the data required in the registration statement could be provided by "reproductions of or extracts from organization records." *Communist Party* v. *Subversive Activities Control Board,* 223 F. 2d 531, 547 (C.A. D.C.), affirmed, 367 U.S. 1. If the officer of petitioner having custody of its records showing the

names and addresses of its officers and the sources and modes of expenditure of its funds may be required to submit those records pursuant to a subpoena *duces tecum,* notwithstanding his claim that they tend to incriminate him personally, it would be an exaltation of form over substance to hold that he may not be required to transpose such data to a registration form to be filed as required by the Act. Whether the records reflecting the required data "are kept formally or informally is immaterial" since "[n]o additional explanatory testimony is required by this statute." *Communist Party* v. *Subversive Activites Control Board,* 223 F. 2d 531, 547 (C.A. D.C.), affirmed, 367 U.S. 1.

It is of course possible that not all the data required on a registration statement can be found in petitioner's records and that consequently the officers might have to rely on their personal knowledge in order to complete the statement. But this Court has specifically rejected the argument that, because some of the information called for in a statement required to be filed may be privileged, no statement at all need be filed. *United States* v. *Sullivan,* 274 U.S. 259. There, the Court held that the fact that some of the answers called for on an income tax return form may be incriminating does not excuse a failure to file any return at all, the proper course being to file a return and claim the privilege, where the facts warrant, with respect to specific questions. Similarly with respect to a registration statement, even if it be assumed that the registering officer has a privilege

with respect to called-for data not found in the organization's records, he would be required to file as complete a statement as possible based on the records, and claim his privilege with respect to the rest.[56] Cf. *Rabinowitz* v. *Kennedy,* 376 U.S. 605, 610–611.

Even if an officer of an organization could invoke the privilege against self-incrimination as to the organization's records, it is unlikely that all of petitioner's officers could do so. In evaluating a claim of privilege which an officer of petitioner might hereafter advance, one of the fundamental principles is that the privilege in question is a privilege against *self*-incrimination. The claimant may not, under the guise of protecting himself against self-incrimination, seek to shield others. *Rogers* v. *United States, supra,* 340 U.S. at 371; *United States* v. *Murdock,* 284 U.S. 141, 148; *Hale* v. *Henkel,* 201 U.S. 43, 69; *Brown* v. *Walker,* 161 U.S. 591, 609. In *Rogers,* in determining that a witness had waived his privilege, the Court stated that "[s]ince the privilege against self-incrimination presupposes a real danger of legal detriment arising from the disclosure, petitioner cannot invoke the privilege where response to the specific question in issue here would not further incriminate her." *Id.* at 372–373. The protection afforded by the privilege "must be confined to instances where the witness has reasonable cause to apprehend danger

[56] For example, if the filing official were known by more than one name and he feared that the listing of his aliases would tend to be self-incriminatory for some reason, he could claim the privilege with respect to his own aliases, though he could *not* do so with respect to the aliases of others.

from a direct answer. *Mason* v. *United States,* 244 U.S. 362, 365 (1917), and cases cited. The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself—his say-so does not of itself establish the hazard of incrimination." *Hoffman* v. *United States,* 341 U.S. 479, 486.

If an officer of petitioner signed a registration statement, he would identify himself as an officer of an organization controlled by the Communist Party. Assuming such an admission might be incriminating, Section 4(f) of the Act provides that the fact of registration cannot be introduced in any criminal prosecution. Admittedly, this is a limited and not an absolute grant of immunity against prosecution. Cf. *Counselman* v. *Hitchcock,* 142 U.S. 547, with *Brown* v. *Walker,* 161 U.S. 591, and *Ullman* v. *United States,* 350 U.S. 422. Nevertheless, it means that the only way the government could possibly use information obtained under the Act would be as leads to obtain other evidence which Section 4(f) apparently does not forbid introducing. But it is incredible to suppose that there is not at least one officer of petitioner—which except for its connection with the Communist Party operates openly—who is known to the government. Indeed, the record shows that the officers of petitioner are publicly disclosed by numerous documents issued by petitioner itself (*e.g.,* A.G. Ex. 34; R. 22). Even without such record evidence, these are matters of public knowledge of which the courts can take notice. See *Jacobson* v. *Massachusetts,* 197 U.S.

11, 30; *Gay's Gold,* 13 Wall. 358, 362; *New York Indians* v. *United States,* 170 U.S. 1, 32; *United States* v. *A. H. Fischer Lumber Co.,* 162 F. 2d 872, 873 (C.A. 4). Thus, some—and surely at least one—officers of petitioner could sign a registration statement without providing the government with any new information and therefore without possibly incriminating himself.

The argument that requiring an officer of petitioner to perform an act which by implication establishes his membership in petitioner amounts to compulsory self-incrimination, when he has never sought to conceal and indeed has many times conceded his membership, is too mechanical an application of the constitutional guaranty. To force an admission of membership from an obscure or concealed member of petitioner is one thing. See *Patricia Blau* v. *United States,* 340 U.S. 159. But to require petitioner's executive secretary to effectuate petitioner's registration under the Act and thus, incidentally, to admit that he is a member and officer of petitioner is another. In the one case there is "a real danger of legal detriment arising from the disclosure" (*Rogers* v. *United States, supra,* 340 U.S. at 373); in the other, there is nothing of the sort.

Even if the officers of the Party did have a constitutional right to refuse to sign the registration statement, an organization which is under a legal obligation to perform an affirmative act also has the obligation to secure someone else to act on its behalf in performing its duty. *United States* v. *3963 Bottles,*

265 F. 2d 332 (C.A. 7); *United States* v. *42 Jars*, 162 F. Supp. 944 (D. N.J.), affirmed, 264 F. 2d 666 (C.A. 3); *Simon* v. *American Tobacco Corp.*, 192 Fed. 662 (S.D. N.Y.). The court of appeals in the case involving the criminal conviction of the Communist Party for failure to register recognized that, if a "willing volunteer" was available to register the Party, the latter was required to register; it held, however, that the government had the burden of proving that such a volunteer existed. *Communist Party* v. *United States*, 331 F. 2d 807, 814–815 (C.A. D.C.), certiorari denied, 377 U.S. 968.

It is extremely likely that petitioner would have volunteers available to register for it. An attorney or other agent could register for the petitioner without having an intimate knowledge of its affairs or indeed any direct knowledge. He could make the statement that petitioner is a Communist-front organization on the basis of the Board's determination in ~~the *Communist Party*~~ this case, and could list the names of officers which petitioner gave him. Moreover, even if such actions did require intimate knowledge of petitioner, they would in no way be incriminating, since attorneys and other agents frequently obtain detailed information concerning a client without having anything other than a professional connection.

It is not our purpose to explore all the ramifications of the question of the possible privilege of petitioner and its officials to refuse to effect petitioner's registration on the basis of the Fifth Amendment. On the contrary, our position is that this question is not

in this case at this time and has been prematurely raised by petitioner. Our purpose has been therefore to refute petitioner's contention that (1) the claim is certain to be made eventually, and that (2) when made it must certainly be upheld, so that (3) it should in the interest of economy be settled in this case (4) in favor of upholding the claim.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be affirmed.

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NOVEMBER 1964.

755-587—64——12

APPENDIX A

Analysis of the Subversive Activities Control Act

The Subversive Activities Control Act is Title I of the Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. 781–798. It has been amended, insofar as it relates to Communist-action or -front organizations, four times—in a relatively minor detail (see p. 169, note 2, below) by the Act of July 29, 1954, 68 Stat. 586; again, in a more substantial manner, by the Communist Control Act of August 24, 1954, Sections 6–11, 68 Stat. 775, 777–780; and finally in minor details by the Acts of August 20, 1958, and May 31, 1962, 72 Stat. 950, 76 Stat. 91. In view of the length of the Act and the complex interlocking of its numerous sections and subsections, a summarization of its principal provisions may be helpful. Rather than a mere section-by-section summary, the effort will be to present an over-all view showing the structure of the Act, with emphasis on the essentials of the registration scheme and the nature of the legal consequences which attach to an organization's act of registering (or being ordered to register) both as they affect the organization itself, considered as an entity, and as they affect individual members of the organization and others.

1. The Congressional findings as to the necessity for the legislation

Section 2 sets forth in fifteen numbered paragraphs certain findings—based on "evidence adduced before various committees of the Senate and House of Repre-

sentatives"—which convinced Congress of the necessity for the legislation. Congress found, for example, that "[t]here exists a world Communist movement" consisting of a "world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization" (Section 2(1)). The "direction and control" of this movement was found to be "vested in and exercised by the Communist dictatorship of a foreign country," not named in the Act (Section 2(4)). This foreign Communist dictatorship, it was further found, establishes "action organizations" in various countries, these organizations being part of a world-wide Communist organization and controlled by the foreign dictatorship (Section 2(5)). These "Communist-action organizations" seek to bring about "the overthrow of existing governments by any available means, including force if necessary" and to set up in their stead local Communist dictatorships subservient to the parent dictatorship (Section 2(6)). These Communist organizations "are organized on a secret, conspiratorial basis" and operate to a substantial extent through organizations known as "Communist fronts," which are maintained and used so as to conceal "their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such 'Com-

munist fronts'" (Section 2(7)). Finally, Congress found (Section 2(15)):

> The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

2. "Communist-action" and "Communist-front" organizations

"Communist-action organization."—The Act defines a "Communist-action organization" as "any organization in the United States," other than one diplomatically accredited, which "is substantially directed,

dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2" *and* which "operates primarily to advance the objectives" of that movement "as referred to in section 2" (Section 3(3)).

"Communist-front organization."—A "Communist-front organization" is defined as "any organization in the United States" which is "substantially directed, dominated, or controlled by a Communist-action organization" *and* "is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement" (Section 3(4)).

3. The registration scheme

The heart of the Act—the organizational registration requirement—is contained in Section 7.

The duty of Communist-action and Communist-front organizations to register with the Attorney General.—Each Communist-action organization (Section 7(a)) and each Communist-front organization (Section 7(b)) is required to "register with the Attorney General, on a form prescribed by him by regulations" as the one or the other type of organization. Registration is to be effected within thirty days after enactment of the Act (Secion 7(c)(1)), or, in the case of an organization which becomes registerable after the Act's passage, within thirty days after becoming registerable (Section 7(c)(2)). In the case of an organization which does not voluntarily register and which is subsequently ordered to register by the Subversive Activities Control Board, registration must

be effected within thirty days after the Board's order becomes final[1] (Section 7(c)(3)).

The registration statement.—The registration process includes the submission of a registration statement, to be prepared in accordance with regulations, containing certain specified information (Section 7(d)). The information is to include (1) the name and address of the organization (2) the name, address, title, and duties of each officer of the organization, including each person who has been an officer at any time during the preceding year, (3) an accounting of all funds received and spent by the organization during the preceding year, including the sources of the funds and the purposes of the expenditures, (4) (applicable to Communist-action organizations only) the name and address of each member of the organization, including each person who has been a member at any time during the preceding year, (5) any aliases that may ever have been used by any officer or member required to be listed, and (6)[2] a list of all printing presses and other mechanical devices used in printing in the possession or control of the organization, its officers, or members.

Annual reports.—Annual reports are required to be submitted to keep the initial registration statement up to date (Section 7(e)).

Records required to be kept.—Accurate financial records are required to be kept by all registered organizations (Section 7(f)(1)). In addition, action or-

[1] The process leading to an order by the Board to register is provided for in Section 13, (see pp. 171–173 below). The conditions under which a Board order becomes final are set forth in Section 14(b) (see p. 176 below).

[2] Added by the Act of July 29, 1954, 68 Stat. 586.

ganizations are required to keep accurate membership lists (Section 7(f)(2)).

Remedies open to persons claiming to be wrongly listed.—Section 7(g) provides remedies for persons who are listed by reporting organizations as being officers or members and who deny that they are such. The Attorney General is required to notify all individuals whom reporting organizations list as officers or members that they have been so listed. Any listed individual who denies that he is an officer or member may request the Attorney General to strike his name from the statement. In that event, the Attorney General is required to investigate the matter, and if he is satisfied that the denial is correct, he is to strike the individual's name. If he is not satisfied that the denial is correct and declines to strike the name, or if he fails to strike it within five months after receiving the request, the individual may petition the Board pursuant to Section 13(b) for an order requiring the Attorney General to strike his name.

Publication to constitute notice.—Upon the registration of an organization, the Attorney General is required to publish in the Federal Register the fact that the organization has registered as a Communist-action or Communist-front organization as the case may be (Section 9(d)). Such publication, it is provided "shall constitute notice to all members of such organization that such organization has so registered" (*ibid.*).

Keeping of registers.—The Attorney General is required to keep registers of all organizations which register, consisting of the names and addresses of the organizations and their registration statements and annual reports (Section 9(a)). The registers are to be open to public inspection, except that the name of any person listed by an organization as being an of-

ficer or member who denies his status as such may not be made public pending determination by the Attorney General of the correctness of the listing (Section 9(b)).

4. Proceedings before the Board leading to orders requiring organizations to register

Section 13 of the Act provides for quasi-judicial proceedings before the Subversive Activities Control Board leading to orders requiring, or refusing to require, organizations claimed by the Attorney General to be action or front groups to register with him as such. The Board itself is established and its general powers and functions defined in Section 12.

The petition by the Attorney General.—Whenever the Attorney General has reason to believe that any organization which has not registered under Section 7(a) as an action organization or under Section 7(b) as a front organization "is in fact an organization of a kind required to be registered under such subsection," he is required to file with the Board and serve upon the organization a petition for an order requiring the organization to register (Section 13(a)).

Hearings before the Board.—Upon the filing of such a petition, the Board (or any member or a designated examiner) holds a hearing to inquire into the facts regarding the organization's registerability (Section 13(c)). The administration of oaths and the issuance of subpoenas are provided for (*ibid.*). Hearings are public, and each party is entitled to present its case with the assistance of counsel, to offer oral or documentary evidence, and to cross-examine opposing witnesses (Section 13(d)).

Types of evidence required to be considered.—Section 13(e) sets forth in eight numbered paragraphs certain types of evidence which the Board is required

to consider in determining whether an organization is a Communist-action organization under Section 3(3). For example, the Board is to take into consideration:

> (1) the extent to which its [the organization's] policies are ~~promulgated~~ formulated and carried out and its activities performed, pursuant to directives or to effectuate the policies of the foreign government or foreign organization in which is vested, or under the domination or control of which is exercised, the direction and control of the world Communist movement referred to in section 2 * * *.

Similarly, Section 13(f) sets forth four evidentiary factors required to be taken into consideration in determining whether an organization is a front group under Section 3(4). These factors are the extent to which (1) the persons who are active in managing the organization are active in managing any Communist-action organization; (2) the organization's financial or other support came from any Communist-action organization; (3) its financial resources and personnel are used to promote the objectives of any Communist-action organization; and (4) the positions taken by it do not deviate from those of any Communist-action organization.

Reports and orders.—If the Board determines that the organization is a Communist-action or Communist-front organization, it must make a report stating its finding of fact and issue an order requiring the organization to register (Section 13(g)(1)). If it determines that the organization is not such a group, it so reports and issues an order denying the Attorney General's petition (Section 13(h)(1)).

Publication to constitute notice.—When an order of the Board requiring registration of a Communist-

action organization becomes final (see p. 176), that fact must be published in the Federal Register and such publication is declared to "constitute notice to all members of such organization that such order has become final" (Section 13(k)).

5. The duty of individuals to register under certain circumstances

The Act also imposes upon individuals a duty to register under certain circumstances.

(a) Officers required to effect an organization's registration

If a Communist-action or Communist-front organization should fail to register or to file a registration statement or annual report as required by Section 7, it is the duty of the executive officer and of the secretary of the organization (or the individuals performing the usual duties of such officers), and of such other officers as the Attorney General may by regulations prescribe, to register for the organization or to file the registration statement or annual report, as the case may be (Section 7(h)). Pursuant to this authority, the Attorney General has designated the following additional officers as sharing with those named in the Act the responsibility of effecting the registration of an organization which is required to register but fails to do so: (a) the president, chairman, or other person who is chief officer; (b) the vice-president, vice-chairman, or person performing the functions of either; (c) the treasurer; and (d) members of the governing board, council, or body. 28 C.F.R. 11.205.

(b) *Personal registration of members of Communist-action organizations*

Conditions under which required.—The Act specifies two conditions under which members of a Communist-action organization are required to register personally with the Attorney General. First, if there is in effect a final order of the Board requiring the action organization to register and more than thirty days elapse without compliance, it becomes the duty of each member of the organization to register personally (Section 8(a)). Secondly, if a Communist-action organization registers but fails to include the names of all its members on the membership list it files, each member not on the list who knows the organization to be registered and to have omitted his name must himself register within sixty days after obtaining such knowledge (Section 8(b)). In either case, the individual is required to file a registration statement containing such information as the Attorney General may by regulations prescribe (Section 8(c)).

Proceedings before the Board.—If an individual who the Attorney General believes is required to register under Section 8, does not in fact register, the Attorney General may petition the Board (as in the case of an organization) for an order requiring the individual to register (Section 13(a)).

Hearings.—The Attorney General's petition for an order to require an individual to register is heard by the Board in the same manner as a petition for an order requiring an organization to register (see p. 171 above) (Section 13(c) and (d)).

Reports and orders.—In each instance the Board must make a report stating its findings and issue an order either requiring the individual to register

(Section 13(g)(2)) or denying the Attorney General's petition (Section 13(h)(2)).

6. Fact of registration not admissible in any criminal prosecution and membership not to constitute per se a violation of any criminal statute

The fact of the registration of any person as an officer or member of any Communist-action or Communist-front organization may not be received in evidence against such person in any prosecution for any alleged violation of any criminal statute (Section 4(f)). In addition, neither the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation of any criminal statute (*ibid.*).

7. Cancellation of registration

The Act establishes procedures whereby an individual or an organization which has once registered—whether with or without an order of the Board commanding him or it to do so—may procure the cancellation of his or its registration in the event of a change in the circumstances which originally required registration.

Application to the Attorney General.—Any organization registered under Section 7 as an action or front group, and any individual registered under Section 8, may, not oftener than once in each calendar year, make application to the Attorney General for the cancellation of such registration (Section 13(b)).

Petition to the Board.—If the Attorney General denies the application, the organization or individual concerned may, within sixty days after such denial, file with the Board and serve upon the Attorney Gen-

eral a petition for an order requiring the cancellation of registration (Section 13(b)).

Hearings.—The petition is heard by the Board in the same manner as a petition by the Attorney General requesting that an organization or individual be directed to register (Section 13 (c) and (d)).

Reports and orders.—In each case the Board must make a report stating its findings and issue an order granting (Section 13(i)) or denying (Section 13(j)) the petition.

8. Judicial review and finality of Board orders

The Act provides that any party aggrieved by any order of the Board be given full opportunity for judicial review either in the United States Court of Appeals for the District of Columbia Circuit or in the circuit of the petitioning party's residence, with the possibility of further discretionary review by this Court on writ of certiorari (Section 14(a)). On such review the Board's findings of fact, if supported by the preponderance of the evidence, are conclusive (*ibid.*).

Exhaustion of judicial review a prerequisite to an order of the Board becoming final.—An order of the Board does not become final, *i.e.*, enforceable, until full opportunity for judicial review has been exhausted or until review is foreclosed by failure to make timely application therefor (Section 14(b)).

9. The legal consequences of an organization's registration or of a final order to register

When an organization registers under Section 7, or when an order of the Board under Section 13 requiring an organization to register becomes final under

Section 14(b), the Act provides for the immediate occurrence of certain legal consequences—one affecting the organization as such, the others affecting members of the organization. In addition, upon the registration of an organization or when an order directing it to register becomes final, certain limitations are imposed upon the conduct of officers and employees of the United States and of "defense facilities," as defined in the Act with respect to their relations with the organization and its members. These various legal consequences may be summarized and classified as follows:

(*a*) *Consequence to the organization as such*

The *"labeling" requirements.*—When an organization is registered or has been finally ordered to register, any publication of the organization transmitted by mail or in interstate or foreign commerce and intended to be circulated among two or more persons must bear on its face and on any wrapper in which it is contained the printed statement "Disseminated by [name of organization], a Communist organization" (Section 10(1)). Similarly, radio and television broadcasts sponsored by the group must be identified as being "sponsored by [name of organization], a Communist organization" (Section 10(2)). Violation of these provisions by the organization or by any person acting on its behalf is made a punishable offense (Sections 10, 15(c)).

(*b*) *Consequences to members of, and contributors to, the organization*

Denial of tax benefits.—Persons making contributions to any organization which is registered or has been finally ordered to register may not deduct the

amount of their contributions from their gross taxable income notwithstanding any other provisions of law (Section 11(a)), and no such organization may claim any tax-exemption privilege specified in Section 101 of the Internal Revenue Code (Section 11(b)).

Employment restrictions.—Section 5(a)(1) provides that members of an organization having knowledge or notice that the organization is registered or has been finally ordered to register are prohibited from (A) concealing or failing to disclose their membership in seeking, accepting, or holding any nonelective federal employment, (B) holding such employment, (C) concealing or failing to disclose their membership in seeking, accepting, or holding employment in any defense facility,[3] (D) working in any defense facility (this clause is applicable only to members of action organizations), or (E)[4] holding office in or being employed by any "labor organization" as defined in the National Labor Relations Act[5] or representing any employer in proceedings under that Act.

Provisions applicable to aliens.—Alien members of or aliens affiliated with organizations which are registered or have been finally ordered to register are excluded from admission into the United States, are

[3] A "defense facility" is defined in Section 3(7), as amended by the Act of May 31, 1962, 76 Stat. 91, as any plant, factory, airport, vessel, pier, etc. "designated by the Secretary of Defense pursuant to section 5(b)."

[4] Added by the Communist Control Act of 1954, Section 6, 68 Stat. 777.

[5] *I.e.*, "any organization * * * in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. 152(5).

deportable, and are ineligible for naturalization.[6] The joining of or affiliating with an organization so registered or required to register, within five years after naturalization, if naturalization occurs after the effective date of the Immigation and Nationality Act of 1952, is declared to constitute *prima facie* evidence, warranting revocation of citizenship in a denaturalization proceeding if not rebutted, of lack of attachment to the principles of the Constitution and of the quality of being well disposed to the good order and happiness of the United States at the time of naturalization.[7]

(*c*) *Consequences to government and defense-facility employees in their relations with the organization and its members*

Contributions to registered organizations forbidden.—When an organization is registered or has been finally ordered to register, officers and employees of the United States and of defense facilities,[8] having

[6] These provisions ere originally contained in Sections 22 and 25 of the Subversive Activities Control Act, which amended the immigration and naturalization laws. They are now contained in the Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, Section 212(a)(28)(E) (exclusion), 241(a)(6)(E) (deportation), and 313(a)(2) (G) and (H) (ineligibility for naturalization). If the alien can establish that he did not know the organization in question to be a Communist organization when he joined it and did not acquire such knowledge prior to the time it registered or was required to register, the provisions are by their terms inapplicable, except that members of action organizations are declared ineligible for naturalization without such qualifying language.

[7] As amended and carried forward in Section 340(c) of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, 261.

[8] See p. 178, note 3 above for the definition of "defense facility."

knowledge or notice of that fact, are prohibited from contributing funds or services to such group (Section 5(a)(2)(A)).

Counseling violation of employment provisions.—Section 5(a)(2)(B) makes it a punishable offense for an officer or employee of the United States or of any defense facility, with knowledge or notice that an organization is registered or has been finally ordered to register, to advise or counsel any person whom he knows to be a member of such organization to perform or omit the performance of any act the performance or omission of which would constitute a violation of the employment provisions of Section 5(a)(1) (see pp. 178 above).[9]

10. Criminal penalties

Organizations.—Any organization which has been directed by a final order of the Board to register and which fails to do so within the time allowed, or which fails to file a required registration statement or annual report or to keep records as required, is punishable for each such offense by a fine of not more than $10,000 (Section 15(a)(1)). Each day of failure to register is a separate offense (Section 15(a)). Each violation of the labeling provisions

[9] In addition, the Act provided that members of an organization having knowledge or notice that the organization is registered or has been finally ordered to register were prohibited from applying for, seeking to renew, using, or attempting to use any passport issued under the authority of the United States (Section 6(a)) and federal employees were prohibited from using or renewing passports to any individual they knew or had reason to believe were members of such organizations (Section 6(b)). This provision was held unconstitutional in *Aptheker* v. *Secretary of State*, 378 U.S. 500.

of Section 10 (see p. 177 above) is similarly punishable (Section 15(c)).

Individuals.—Each individual officer having a duty under Section 7(h) to register or to file a registration statement or annual report on behalf of an organization which has been finally ordered to register (see p. 173 above) is punishable for each failure to fulfill such duty by a fine of not more than $10,000, or imprisonment for not more than five years, or both (Section 15(a)(2)). Each individual having a duty to register personally under Section 8 (see p. 174 above) is similarly punishable, provided there is in effect with respect to him a final order of the Board requiring him to do so (Section 15(a)(2)). In either case, each day of failure to register is a separate offense (Section 15(a)). The willful making of a false statement or the willful omission of a fact required to be stated is similarly punishable (Section 15(b)). Each false statement or willful omission constitutes a separate offense (Section 15(b)(1)), and each listing of the name or address of any one individual is to be deemed a separate statement (Section 15(b)(2)).

Any individual who violates any of the employment provisions or the contributions prohibition of Section 5 (see pp. 178, 179–180 above), or the labeling provisions of Section 10 (see p. 177 above) is punishable for each such offense by a fine of not more than $10,000, or imprisonment for not more than five years, or both (Section 15(c)).

Act not to affect previously existing criminal statutes.—The Act provides that its provisions are to be construed as being "in addition to and not in modification of existing criminal statutes" (Section 17).

11. Communist-infiltrated organizations

The Act as originally passed defined and dealt with but two types of "Communist organization" (Section 3(5))—the Communist-action organization (Section 3(3)) and the Communist-front organization (Section 3(4)). The Communist Control Act of 1954, Sections 7–11, 68 Stat. 775, 777–780, amended the Act so as to define a third category of Communist organization, *viz.*, the "Communist-infiltrated organization," and to enact various restrictive measures with respect to such groups.

Communist-infiltrated organizations are not subject to the registration requirements of the Act. They are, however, subject to Board orders "determining" them to be Communist-infiltrated, which orders, when they become final, entail for such groups some of the same legal consequences which attach to action and front groups when registered or directed to register by a final Board order. "Infiltrated" organizations are defined in Section 3(4A). Proceedings leading to a Board order determining an organization to be Communist-infiltrated are provided for in Section 13A. Such orders are reviewable in the same manner as other orders of the Board (Section 13). The legal consequences which flow from a final Board order determining a group to be infiltrated are set forth in Sections 10, 11, 13A(h), and 13A(j).

12. Separability clause

The Act contains the customary separability clause providing that, if any of its provisions or the application thereof to any person or circumstances is held invalid, the remaining provisions, or the application to other persons or circumstances of any provisions held invalid as to some, shall not be affected thereby (Section 32).

APPENDIX B

THE COMMUNIST FRONT IN THEORY AND PRACTICE

A. Origins and development of the Communist-front theory

Lenin and particularly Trotsky had expected that, after the Communists seized power in one country, revolutions would quickly follow in other countries. In fact, however, this did not occur following the Soviet Revolution. While Communist parties existed throughout Europe, they were not strong enough to seize power. Consequently, the leaders of the Communist movement decided to use more subtle means than direct attempts to overthrow governments by force. See Selznick, *The Organizational Weapon: A Study of Bolshevik Strategy and Tactics* [hereinafter Selznick] 128–129. They foresaw that great strength could be added to their own efforts by enlisting the support of other mass organizations under cover of supposedly common goals and grievances. Not only were existing organizations infiltrated and redirected toward Communist goals, but entirely new organizations were established especially for the purpose of carrying out Communist programs behind a non-Communist facade. The Communists themselves referred to these mass organizations as "fronts" behind which their true Communist objectives could be carried out. As R. N. Carew Hunt described the origins of this approach (*The Theory and Practice of Communism* [hereinafter Hunt] 171):

> The policy of creating organizations which are "fronts" in the sense that their real purposes

> are masked behind a non-political facade of social ideals generally acceptable to progressive public opinion goes back to the early years of the Comintern [Communist International]. At the third Comintern Congress of 1921 it was recognized that Communism would make no rapid progress if it was to be fostered only by such organizations as were avowedly Communist, and that they must therefore be reinforced by others which would attract sympathizers and so provide a screen under cover of which the Communists could advance their policies.

The new plan of using fronts required a change in position. Plainly, a front could not, if it intended to conceal its Communist relationship, advocate revolution. Indeed, one of the reasons for the fronts was that the masses were not prepared to accept Communism in its natural state. It was necessary therefore to wrap Communist dogma in a different, more acceptable container. As Theodore Draper describes the situation (*The Roots of American Communism* [hereinafter Draper] 201):

> The historic left had no problem of concealment or subterfuge. It sought to make the revolution by direct, open, unequivocal revolutionary propaganda. For the Communists, this approach had lost its charm. Instead of gearing the masses to them, they were going to gear themselves to the masses. They would give the masses only as much as they thought the masses capable of swallowing. Now some things could not be divulged. The Communists had to dole out the truth in stages or installments, especially if it involved a dangerous subject like force and violence.

The use of fronts was opposed by some members of the younger Communist parties. They interpreted Communist doctrine as requiring total hostility and

intransigence in dealing with democratic or non-Communist societies. But Lenin, seeing the futility of consistent militance, demanded that they "abandon their sectarianism," establish contact with the masses, and seize power by working in and through governments, trade unions, and any other available institutions. Hunt, p. 171. He praised the revolutionary spirit of the younger Communists, but asserted that it was "abstract Communism" which had not matured to the stage of "practical mass political action." Quoted in Hunt, p. 171.

Lenin's leading colleagues, Trotsky and Stalin, elaborated the Communist theories concerning the uses of fronts. In statements made within the Executive Committee of the Communist International in 1922, Trotsky outlined the circumstances under which the "United Front" tactic could be effectively utilized. He recognized first the two extremes where work within and infiltration of other organizations would be both ineffective and unnecessary (Trotsky, "The Tactics of the United Front," *Fourth International,* March 1941, p. 83):

> In cases where the Communist Party still remains an organization of numerically insignificant minorities, the question of its conduct on the mass-struggle front does not assume a decisive practical-organizational significance. In such conditions, mass actions remain under the leadership of old organizations which by virtue of their still powerful traditions continue to play the decisive role.
>
> * * * * *
>
> Similarly the problem of the United Front does not arise in countries where * * * the Communist Party is the sole leading organization of the toiling masses.

He then described the situation where Communists must consider "front" activities (*id.* at 84):

> But wherever the Communist Party already constitutes a big, political organized force, but not the decisive magnitude * * * it is confronted with the question of the United Front in all its acuteness.

Trotsky concluded his remarks by encouraging Communist parties throughout the world to unite with, and absorb, any other political parties or organizations having parallel programs which cou'd finally be diverted to Communist ends. The ultimate goal was not to strengthen these cooperating organizations, but rather to weaken and ultimately dominate them. Thus, while demanding complete cooperation from other groups, Trotsky said that Communists must maintain their own autonomy (*id.* at 85):

> [A]ny sort of organizational agreement which restricts our freedom of criticism and agitation is absolutely inacceptable to us. We participate in a united front but do not for a single moment become dissolved in it. We function in the united front as an independent detachment. It is precisely in the course of struggle that broad masses must learn from experience that we fight better than the others, that we see more clearly than the others, that we are more audacious and resolute. In this way, we shall bring closer the hour of the United Revolutionary Front under the undisputed Communist leadership.

Although Trotsky's insistence on the immediate spread of Communism by force to other countries (the doctrine of continual revolution) was not adopted by Lenin, his theories on the "United Front" became the official policy and were carried on by Stalin. Stalin described the operational relationship which must

exist between the official Communist Party and organizations which it seeks to use (Stalin, *Problems of Leninism* (International Publishers) 86):

> The Party is the organized detachment of the working class. But the Party is not the only organization of the working class. The Proletariat has also a number of other organizations without which it cannot properly wage the struggle against capital: trade unions, cooperative societies, factory and works organizations, parliamentary groups, nonparty women's associations, the press, cultural and educational organizations, youth leagues.
>
> * * * The overwhelming majority of these organizations are non-party * * * or represent its offshoots. All these organizations, under certain conditions, are absolutely necessary for the working class, for without them it would be impossible to consolidate the class positions of the proletariat in the diverse spheres of struggle; for without them it would be impossible to steel the proletariat as the force whose mission it is to replace the bourgeois order by the Socialist order. But how can single leadership be exercised with such an abundance of organizations? * * * The question then arises: Who is to determine the line, the general direction, along which the work of all these organizations is to be conducted? Where is that central organization which is not only able * * * but, in addition, is in a position * * * to induce all these organizations to carry out this line, so as to attain unity of leadership and to preclude the possibility of working at cross purposes?

Stalin then proceeded to answer his own rhetorical questions: "This organization is the Party of the proletariat." *Ibid.* He explained that (*ibid.*):

> The Party possesses all the necessary qualifications for this * * * [and] is, by reason of

> its experience and prestige, the only organization capable of centralizing the leadership of the struggle of the proletariat, thus transforming each and every non-party organization of the working class into an auxiliary body and transmission belt linking the Party with the class. The Party is the highest form of class organization of the proletariat.

Since the techniques and ultimate goals of the Party would rarely be accepted by non-Party organizations, Stalin recognized the necessity of filtering Communist dogma through mediating channels. *Ibid.* He emphasized, however, that organizations used for this purpose must be kept under strict Party control and discipline (*id.* at 87):

> [T]he opportunist theory of the 'independence' and 'neutrality' of the non-party organizations * * * is wholly incompatible with the theory and practice of Leninism.

The concept of the Front as a "transmission belt," which Stalin utilized, originated with Lenin (XXVI *Collected Works* (International Publishers) 64–65):

> [T]he dictatorship of the proletariat cannot be effected by organizations that embrace the whole of the proletariat. It is impossible to effect the dictatorship without having a number of "transmission belts" from the vanguard to the masses of the advanced class, and from the latter to the masses of the toilers * * *.

The role of front organizations, then, is to communicate the Communist dogma—usually in somewhat more palatable form—to those unwilling to accept it straight from the "vanguard." Stalin expanded upon Lenin's idea (*Problems of Leninism* (International Publishers) 29):

> The levers or the belts are those very mass organizations of the proletariat without whose aid the dictatorship cannot be realized.

He stressed that organizations which were not Communist themselves, but were used by Communists to promote their programs, must always be carefully controlled by the "advanced detachment" or "vanguard" (*id.* at 29):

> The directing force is the advanced detachment of the proletariat, its vanguard, which constitutes the main guiding force of the dictatorship of the proletariat.
>
> * * * * *
>
> The proletariat need these belts, these levers and this directing force, because without them it would be, in its struggle for victory, like a weaponless army in the face of organized and armed capital.

Secondary Communist leaders spelled out the ideas of Lenin, Trotsky, and Stalin. Alexander Bittelman, a theoretician in the American Communist movement, stated that a distinction must be made between telling the workers the truth and telling them about the real nature of Communist objectives (Bittelman, "The Task of the Hour," *The Communist,* October 1921, p. 6):

> The whole truth does not mean telling the workers, at every turn of the game, that the seizures of power will have to be accomplished by force of arms. The injection of the idea of armed force, whether as a means of defense or offense, at the wrong psychological moment can only harm the revolutionary movement. There are stages in the class struggle that do not call for the introduction of the idea of armed force. *Telling the workers the whole truth about a given situation does not mean giving the workers the full Communist program.* [Emphasis in original.]

Although Bittelman is here speaking of the use of force and violence to establish the dictatorship of the

proletariat, the same principle is applicable to the introduction of almost all the Communist program to the uninitiated masses. The theory is that too much truth is hard for those not in the "vanguard" to bear. In actual practice this means that Communism must be temporarily disguised until the "advanced guard" of the Communist movement is in a position of complete authority. In Bittelman's terms: "A Communist program is not a bible to be brought to the workers always in full, with all its implications. It is a guide to action for the advanced guard of the working class—the Communist Party. It is to be applied in practice according to the demands of every particular situation." *Ibid.*

Numerous Communist writers popularized Stalin's theory of mass front organizations as the transmission belt between the Party and the workers. Otto Kuusinen, Secretary of the Comintern, stated in 1926 (quoted by Hathaway, "On the Use of 'Transmission Belts' in Our Struggle for the Masses," *The Communist*, May 1931, p. 413):

> The first part of our task is to build up, not only Communist organizations, but other organizations as well, above all mass organizations sympathizing with our aims, and able to aid us for special purposes * * *. We must create a whole solar system of organizations and smaller committees around the Communist Party, so to speak, smaller organizations working actually under the influence of our Party (not under mechanical leadership.)

Similarly, Hathaway wrote in 1931 (*id.* at 412):

> [W]e must break definitely with the conception that Communist work consists solely in direct efforts to build the Communist Party and in recruiting new members. We must learn to set up and work through a whole series of mass organizations and in this way also de-

> velop our Party work. Our chief error is our failure to understand the role of and to systematically utilize mass organizations * * * as transmission belts to the broad masses of non-party workers.

These mass organizations, according to Hathaway, operate as belts running in both directions—to convey the modified Communist message to non-Communist workers and to draw those workers into full-fledged Communist Party membership (*id.* at 412–413):

> The Communist Party is necessarily composed of the most conscious and self-sacrificing elements among the workers. These mass organizations, on the contrary, with a correct political line, can be made to reach many thousands of workers not yet prepared for Party membership. Through these organizations, led by well-functioning Party fractions, the Party must necessarily find its best training and recruiting ground. These are the medium through which the Party, on the one hand, guides and directs the workers in their struggles and, on the other hand keeps itself informed on the moods of the masses, the correctness of Party slogans.

Hathaway then emphasized that the success of the "front" strategy is totally dependent upon tight internal control of the mass organizations by Communist fractions or cells. These units are the key to the transformation of masses of workers into Communist Party members and the Communist Party into a mass party (*id.* at 414):

> The work of our comrades and units must be conducted in such a way that everywhere (in the factories, among the unemployed, among the negroes, etc.) we set up various organized groups under our influence and through which our comrades work. These groups, in turn,

> must be the instruments through which still greater masses of workers are organized for revolutionary struggle against the bourgeoisie. It is the principle of 'transmission belts' * * * which must be firmly established in our Party as the means of our transformation from a propaganda Party to a Bolshevik mass party.

Willy Muenzenberg set forth the goals of the Communist front strategy in a speech to the Sixth Congress of the Comintern in 1928 (*International Press Correspondence,* August 1, 1928, pp. 751–752):

> 1. To arouse the interest of those millions of apathetic and indifferent workers who take no part whatever in political events, who are not interested either in the economic or cultural struggle of the proletariat, who simply have no ear for Communist propaganda. These people we wish to attract and arouse through new channels, by means of new ways.
>
> 2. Our sympathetic organizations should constitute bridges for the non-Party workers * * * who have not yet mustered the courage to take the final step and join the Communist Party, but who are nevertheless in sympathy with the Communist movement and are prepared to follow us part of the way.
>
> 3. By means of the mass organizations we wish to extend the Communist sphere of influence in itself.
>
> 4. The organizational linking up of the elements in sympathy with the Soviet Union and with the Communists.
>
> 5. We must build up our own organizations in order to counteract the increasing efforts of the bourgeois and social-democratic parties in this respect, and
>
> 6. Through these sympathetic and mass organizations we should train the cadres of militants and officials of the Communist Party possessing organizational experience.

Muenzenberg then makes a final summary statement that "auxiliary organizations" should play a key role in bringing about the true revolution throughout the world (*id.* at 752):

> Our tactics should therefore be to win the old mass organizations that are swayed by the social democracy with whom we vie for influence, to extend and build up the mass organizations and to develop them into real mass organizations. * * * [F]ormation and extension of the mass organizations is of paramount importance to the growth of the Communist Parties; the mass agitation is an important part of the United Front tactics. From the Communist propaganda groups of 1919 we must grow into real revolutionary mass parties, and our auxiliary organizations into mass organizations gathering millions of workers, in order to be able to inaugurate and lead the struggle for power in all countries.

B. The tactics of the Communist front

We have described the origins of the Communist front concept and its theoretical development by Communist leaders and theoreticians. We shall now show how this theory has been applied.

The most obvious kind of organization with potentiality for subversion was perhaps the trade union. Lenin had described how this was to be done (*Left Wing Communism: An Infantile Disorder* (International Publishers) 38):

> It is necessary to make any and every sacrifice * * * to resort to all sorts of devices, maneuvers, and illegal methods, to evasion and subterfuge, in order to penetrate the trade unions to remain in them, and to carry on Communist work in them at all costs.

Similarly, in advising Communists who had been expelled from trade unions on means of re-infiltration, Lenin told them "to practice trickery, to employ cunning, and to resort to illegal methods—to sometimes even conceal the truth." Lenin, *Should Communists Work in Reactionary Trade Unions?*, II *Selected Works* 597.

Despite Lenin's writings, before the adoption of the front theory in 1920, there existed a deep antagonism within the Communist movement toward other movements, such as trade unionism, which appealed to the workers. The Communists found it difficult initially to share the affection of the "masses" with any other movement. Thus, as late as 1919 and 1920, the Communists generally scorned the labor movement as nonrevolutionary and ineffectual. As indicated by the Communist press of that period, it was to be destroyed rather than used. "Trades Unionism is the arch enemy of the militant proletariat. This is one of the tasks of the Communist Party—the destruction of the existing trades union organizations." *The Communist,* October 18, 1919, p. 2. As one Communist leader, Charles Ruthenberg admitted, "The Communist Party of 1919 stood outside of the labor movement, endeavoring to draw the workers into its ranks through agitation and propaganda which pointed to the necessity of a revolutionary party fighting for the overthrow of capitalism." *The Workers Monthly,* September 1926, p. 484. Theodore Draper concludes that the Communists held themselves aloof from the economic and political unrest in 1920 because "[i]t was not revolutionary enough." Draper, p. 201.

Upon adoption of the front theory, the Communist attitude toward labor unions abruptly changed. The only necessary prerequisite for the conversion of a group into a Communist front is the existence of some sort of organization. The nature of the or-

ganization or its political acceptability could be completely disregarded. According to one writer, "Communists are not to be dissuaded from doing their work within mass organizations simply because of a 'reactionary' leadership or program." Selznick, p. 121.

As successful devices for grievance purposes, for gaining better wages and working conditions, and for general purposes of presenting the demands of the workers in a united fashion, workers' organizations had become popular and widespread among the industrialized nations. The Communists saw an opportunity to use those organizations already in existence and to create similar organizations as fronts. Therefore one of the statements adopted at the Second Congress of the Communist International in 1920 was (Chamberlin, *Blueprint for World Conquest* 79):

> The Communists have no fear of the largest workers organizations which belong to no Party, even when they are of a decidedly reactionary nature (yellow unions, Christian associations, etc.). The Communist Party carries on its work inside such organizations and untiringly instructs the workers.

Indeed, this Congress went even further and required as one of the twenty-one conditions for admission to the Comintern (*Theses, Statutes, and Conditions of Admission to the Third (Communist) International,* Hearings before the House Special Committee on Un-American Activities, 76th Cong., 1st Sess., vol. 7, p. 4669):

> Every party which wishes to join the Communist International must carry on systematic and persistent Communist activity inside the trade unions, the workers' councils and factory committees, the co-operatives, and other mass workers' organizations. Within these organizations Communist cells must be organized

> which shall by persistent and unflagging work win the trade unions, etc., for the Communist cause. In their daily work the cells must everywhere expose the treachery of the social-patriots and the instability of the "centre." The Communist cells must be completely subordinate to the Party as a whole.

In accordance with this resolution the British Communist Party instructed its members (Bulletin of June 24, 1926) to get elected where possible to important conferences of the British Labor Party (from which Communists had previously been expelled) and to operate according to instructions from Communist headquarters. The members' duties were to keep their superiors informed of conference activities, to propose and act on resolutions in cooperation with their fellow Communists, and to form secret "fractions" in the Labor Party and in trade unions. The British representative on the Executive Committee of the Communist International reminded the agents conducting such infiltration "that in whatever capacity our Party members are serving in the general working-class movement, their Party allegiance must supersede all other responsibilities." Laski, *Communism* 204–205. The necessary effect of this strategy is described by Harold Laski (*id.* at 210):

> The more unified, in short, the working-class becomes, the nearer it moves to power; and even those workers who see nothing Communist in united action will find, when they are engaged in it that they have been pursuing a Communist policy without knowing it. * * * The tactic of the United Front is, then, a Machiavellian maneuver dictated by the necessities of the international situation; it is the policy which the French socialist, Longuet, not

> inaptly described in the famous line of Racine: "I embrace my rival, but it is the better to choke him."

The success or failure of the take over of Communist factions is, of course, dependent almost entirely upon the abilities and flexibility of the Communist functionary selected to lead one of these fronts. He must be able to infiltrate an existing group, get himself elected to a responsible position, and exert his influence in such capacity in favor of the Communists. This requires a particularly dedicated Communist—a "professional revolutionist." J. Peters, *The Communist Party—A Manual on Organization* (*1935*), reprinted in Hearings Before the House Special Committee on Un-American Activities, 76th Cong., 1st Sess., Part I, App., p. 734. He describes such an individual as a person

> * * * ready to go whenever and wherever the Party sends him. Today he may be working in a mine, organizing the Party, the trade unions, leading struggles; tomorrow, if the Party so decides, he may be in a steel mill; the day after tomorrow, he may be a leader and organizer of the unemployed.

It is expected that a few such well-placed Communists in an organization can direct that organization's total energies for the good of Communism. According to Lenin "On the Road," *Lenin on Organization* (The Daily Worker Publishing Co.) 202):

> [E]very nucleus and every Party workers' committee must be a base supporting the agitational, propaganda and organizing work among the masses, i.e., they must go wherever the masses are going and at every step endeavor to direct their consciousness towards socialism, they must

> associate every private question with the tasks of the proletariat, they must use every attempt at organization to further the cause of class consolidation, and by their energy and moral influence (and not, of course, by their titles and ranks) gain the lead in every legal proletarian organization. * * * Under all conditions and circumstances, and in every possible situation, they will carry on a Party policy, they will influence their environment in the spirit of the Party and will not allow their environment to engulf them.

Ultimate control of the organization is accomplished by the cooperation of a number of infiltrators in the form of a Communist "nucleus." The Second Congress of the Communist International in 1920 described the operation of these nuclei (quoted in Selznick, p. 66):

> The fundamental principle of all organization work of the Communist Party and individual Communists must be the creation of Communist nuclei everywhere where they find proletarians and semi-proletarians—although even in small numbers. In every Soviet of Workers' Deputies, in every trade and industrial union, cooperative association, factory, tenants' union, in every government institution everywhere, even though there may be only three people sympathizing with Communism, a Communist nucleus must be immediately organized. It is only the power of organization of the Communists that enables the advance guard of the working class to be the leader of the whole class. Communist nuclei working in organizations adhering to no political path must be subject to the Party organization in general, whether the Party itself is working legally or illegally at the given moment. Communist nuclei of all kinds must be subordinated one to another in a strictly hierarchical order and system.

We have seen that well-established mass organizations are special targets of Communist infiltration and control. The advantage of this tactic is the capture of an operating organization with a fixed reputation. However, it may be difficult to subvert the goals of established organizations and the replacement of their leadership against the will of most of their members. Therefore, as indicated above, not all front organizations are the result of Communist conversion of an existing organization; many fronts are specially created. As Carew Hunt has described the use of these new organizations (Hunt, p. 181):

> The most effective arrangement has been to appoint as President a politically colorless but otherwise prominent non-Communist, but to have a Communist or crypto-Communist Secretary in the background who exercises control. Such organizations are of the utmost assistance to the Communists in their task of manipulating public opinion. For the support which the latter receive from left-wing elements is of incalculable value. A government has only to suppress a Communist newspaper for sedition, or to arrest a leader for proved treasonable conspiracy, to arouse an outcry, in the name of freedom of the press or of political liberty, led by persons who are not Communists at all, but whom no amount of experience will convince that the principles for which they stand would count for nothing were the Communists themselves to come into power. For the Communist principle has always been that which Montalembert accused contemporary Catholics of adopting: "When I am the weaker, I ask you for liberty because it is your principle; but when I am stronger, I take it away from you because it is not my principle."

Another author describes the steps taken in the creation of what he refers to as "peripheral organizations" (Selznick, pp. 123–124):

> 1. A group of reliable nonparty friends of the Communist Party—or secret Party members—acts as an initiating nucleus in issuing a call for the establishment of the organization. This committee draws up a provisional program which has the approval of the Party.
>
> 2. On the basis of this provisional program, a larger group, but still not the public at large, is canvassed in a search for a list of sponsors who can invest the new organization and it program with the requisite legitimacy.
>
> 3. A provisional secretary is appointed, usually a Party member, whose access to the files and personnel of the organization may be exploited for Party purposes. In some cases, the secretary is given unusual powers in conducting the affai.. of the organization.
>
> 4. An effort is made to have some prominent public figure assume the presidency; if such a person is likely to balk at Communist control, it is desirable that he be one who is occupied with other affairs and hence unable to follow the activities of the organization too closely. In any case, such a person can easily be surrounded with a dependable executive board so that in case of conflict he would have no recourse but to resign.
>
> 5. The provisional program and provisional secretary assume the status of accomplished facts and are usually confirmed when the organization meets. In effect, these matters are never opened for serious discussion.

C. The development of the United Front

1. The "United Front" strategy of Communism is closely related to the use of Communist "fronts"

which is described above. In many respects they describe two different aspects of the same strategy. Whereas a Communist front describes an organization which has been organized or taken over covertly by Party members, the "United Front" is the open cooperation by the Party with other mass organizations devoted to working class problems. The primary objective of this approach was not to help solve these problems, but to create an opportunity for Communists to infiltrate and convert the cooperating organizations into fronts. As a delegate to the Second Comintern Congress in 1920 stated (Tyler, *The United Front* 11):

> Comrades of the Third International: There is a movement on foot in Europe for a United Front. It does not matter whether we are in favor of it or not; our tactics compel us to appear to be in favor of it; but we ask the Communist sections all over Europe to take part in the creation of the United Front, not for the purpose of making it effective, but for the purpose of strengthening the Communists through direct propaganda inside the organizations taking part.

Douglas Hyde gives the following succinct definition of this movement (*The Peaceful Assault: The Pattern of Subversion* 96):

> The United Front is the means by which a small minority of Communists can influence and use large masses of people and so come to power with the support of people who have no real sympathy for their aims and beliefs. The essence of the tactic consists in discovering popular slogans and genuine grievances around which joint activity may be developed and then, in due course, using this activity to strengthen the Communist Party and to destroy its rivals.

Trotsky again is the Communist leader most responsible for originating and directing the strategy of the United Front. The Unified Front was opposed by many of the leading revolutionaries since they considered any cooperation between the Party and other mass organizations—even for the ultimate purpose of subverting and dominating them—to be compromise and "rightist" deviation. In rebutting this position, Trotsky argued. (Trotsky, "The Tactics of the United Front," reprinted in the *Fourth International,* March 1941, pp. 83–84):

> The Party must assume the initiative in securing unity in this current struggle. Only in this way will the Party draw closer to these two-thirds which do not as yet follow its leadership, which do not as yet trust it because they do not understand it. Only in this way can the Party win them over.
>
> * * * * *
>
> If the Communist Party did not seek for organizational avenues to the end that at every given moment joint, coordinated actions between the Communists and the non-Communists (including the Social-Democratic) working masses were made possible, it would have thereby laid bare its own incapacity to win over—on the basis of mass actions—the majority of the working class. It would degenerate into a society for Communist propaganda but never develop into a party for the conquest of power.
>
> It is not enough to have a sword, one must give it an edge; it is not enough to have an edge, one must know how to use it.
>
> After separating the Communists from reformists it is not enough to fuse the Communists together by means of organizational discipline; it is necessary that this organization should learn how to guide all the collective

> activities of the proletariat in all spheres of its living struggle.

Once again, although Trotsky himself was rejected, his ideas were not. This policy toward "reformist" groups survived and became the official Communist position concerning the "United Front." As Stalin described it (*Foundations of Leninism* (International Publishers) 101):

> To a reformist, reforms are everything while revolutionary work is just something to talk about, a diversion. * * * To a revolutionary, the opposite is the case; the main thing is the revolutionary work and not reforms, for reforms are the mere by-product of the revolution. * * * The revolutionist will accept the reform in order to use it as a means wherewith to link legal work with illegal work, in order to use it as a screen behind which his illegal activities for the revolutionary preparation of the masses for the overthrow of the bourgeoisie may be intensified.

Thus, a front does not exist for its own sake or for any good it might do. It is a tool to be used, a means to achieve "illegal" ends.

2. Having described the theoretical basis of the United Front, we will now discuss its application to six historical periods.

a. The period from 1919 to 1928 is known as the "United Front from Above," since primary emphasis was placed on influencing the leaders or capturing the leadership of large workers' organizations throughout the world. Emphasis was placed upon specific working-class demands common to various organizations. However, almost all appeals for cooperation were made by the Communists to the leaders of workers' groups rather than to the workers themselves. Cooperation was sought from the various socialists poli-

tical parties throughout Europe, but, since the Communists insisted upon their own revolutionary program, little real cooperation was attained. For this reason the "United Front" failed to materialize to any meaningful extent during this period. Overstreet and Overstreet, *What We Must Know About Communism* [hereinafter Overstreet] 145.

b. From 1928 to 1933 the world Communist movement followed the "United Front from below," with attention given to direct appeals to the masses, particularly in the trade unions. Attention shifted from cooperation among workers' organizations to infiltration and control of individual "reformist" groups by Communists. We have described above the general strategy for this kind of subversion. More specifically, the aim was to creat dissension within the ranks of the workers and capture positions of leadership when established officers were forced out (Degras, *The Communist International, 1917–1940: Documents,* 257):

> Koenen (an officer of the International) emphasized the importance of the trade union work; the Communist cells in these were "to annoy, to torment, and to drive to desperation" the trade union bureaucracy. Where Communist parties were illegal they must establish "sympathizing" organizations through which the illegal party could exert its influence.

Besides the subversive activities within existing groups, "transmission belts" were created as special links from the "advanced guard" of the proletariat to the uncomprehending masses. However, most of these specially created front organizations were so patently Communist controlled and identified with the Party that little attraction was offered to the working man. Overstreet, p. 149; Selznick, p. 137.

c. From July 1935 to August 1939, the movement became the "People's Front against Fascism" in response to the threat of the Axis powers to the Soviet Union. The program was described by Georgi Dimitroff, General Secretary of the Communist International. Dimitroff, *The United Front: The Struggle Against Fascism and War* 40:

> In forming the Anti-Fascist People's Front, a correct approach to these organizations and parties which have in them a considerable number of the working peasantry and the mass of the urban petty bourgeoisie is of great importance. * * * Under certain conditions, we can and must try to draw these parties and organizations or certain sections of them to the side of the Anti-Fascist People's Fund, despite their bourgeois leadership.

Dimitroff emphasized the necessity of abandoning old Communist antagonisms toward Social-Democratic political parties and "Reformist" organizations and relaxation of the militant "left sectarian" tactics ordinarly employed by the Communist Party (*id.* at 37):

> Communists, of course cannot and must not for a moment abandon their own independent work of Communist education, organization and mobilization of the masses. However, to ensure that the workers find the road of unity of action, it is necessary to strive at the same time both for short-term and for long-term agreements that provided for joint action with social-democratic parties, reformist trade unions and other organizations of the toilers against the class enemies of the proletariat. The chief stress in all this must be laid on developing mass action locally, to be carried out by the local organizations through local agreements.

During this period the Communist concern for cooperation was genuine, due to the rise of fascism in Germany, Italy, and Japan. The distinct threat posed by these powers to the Soviet Union prompted it to concern itself with its own immediate welfare rather than the subversion of other governments. Selznick, pp. 138–144.

Nonetheless, in their efforts to win sympathy and support from the peoples of the world the Communists did not abandon their United Front tactics. This has been described in the candid analogy used by Dimitroff (p. 52):

> Comrade, you remember the ancient tale of the capture of Troy. Troy was inaccessible to the armies attacking her, thanks to her impregnable walls. And the attacking army, after suffering many sacrifices, was unable to achieve victory until with the aid of the famous Trojan horse it managed to penetrate to the very heart of the enemy's camp.
>
> We revolutionary workers, it appears to me, should not be shy about using the same tactics with regard to our fascist foe, who is defending himself against the people with the help of a living wall of his cutthroats.

Special attention was paid to the use of the "Trojan Horse" approach among charitable, civic, and fraternal organizations and among racial and ethnic groups particularly disturbed by the rise of fascism. As in the past periods, if no organization appropriate for propaganda purposes existed in a particular area, new groups were created. Overstreet, p. 150; Selznick, p. 145.

d. With the signing of the Stalin-Hitler mutual non-aggression treaty in August 1939, Communist strategy was forced to change abruptly. Instead of attempts to create a militant anti-fascism within na-

tions such as the United States and Great Britain, the "United Front against Imperialism" propagandized against these same nations from 1939 to 1941 as "imperialistic warmongers" who were to blame for world unrest. Slogans designed originally to "get America into the war" were changed overnight to "keep America out of the war." Front groups especially created to preach anti-fascism either had to disband completely or to change their course radically in order to advocate that which they had decried only a short time before. Overstreet, pp. 179–180; Daniels, *A Documentary History of Communism* [hereinafter Daniels] 121–124.

e. The United Front strategy underwent another radical shift with the German invasion of Russia in June 1941. The Communists again undertook to cooperate with non-Communist nations. For example, in the United States the Communist Party was dissolved, at least in name, and its activities taken over by the Communist Political Association. During the war years all front activities were devoted to the encouragement of the war effort. Particular attention was given to the mobilization of pro-Soviet sentiment and to the promotion of all programs designed to support the Russian military effort. Overstreet, p. 153; Daniels, pp. 126–134.

f. From 1945 to the present Communist activities have concentrated on the "United Front for Peace." The Communists' primary goal since the end of World War II has been to cast the Soviet Union in the role of the nation most interested in world peace and the United States and its allies as the aggressors interested only in colonialism and world domination. Many of the front organizations originally created to promote goodwill and cooperation between the allied powers during the war became too closely identified

with this position to be of any subsequent use and were, therefore, discarded. New fronts were started with the announced aims of promoting the "peace-loving" nature of the leaders of the Communist nations. Overstreet, pp. 182–186.

Throughout all these periods a key characteristic of a Communist-front organization, and an indication of its external control, have been its formation as a result of a Communist interest in a particular cause. This tactic was recognized and promoted by Lenin himself. "We would be very poor revolutionaries," he wrote, "if, in the great proletarian war for emancipation and socialism, we did not know how to utilize every popular movement against each separate disaster caused by imperialism in order to sharpen and extend the crisis." Lenin, *Discussion of Self-Determination Summed Up,* XIX *Collected Works* 303. It was immaterial for these purposes whether the support gained was permanent or not, since the purpose of exploiting a cause was to create disorder and to use events and casual allies to the greatest advantage. As Lenin further stated, the Communist movement should use "every, even the smallest opportunity of gaining a mass ally, even though this ally be temporary, vacillating, unstable, unreliable, and unconditional." *Id.* at 305.

D. Use of Communist fronts in the United States

In the United States the work of the Communist Party during the 1920's and 1930's was centered on the infiltration of mass organizations and creation of front organizations particularly among workers and farmers. For example, according to the American Communist Party Manual, "[w]e have to work untiringly in the existing farm organizations in order

to isolate the rich farmers, to win the poor farmers, and the sections of the middle farmers to the side of the workers, and at least to neutralize other sections of the middle farmers." Quoted in Tyler, p. 11.

For example, the Communist Party attempted to capture and control the Farmer-Labor Party of America at its convention in 1923. Although outwardly the only Communists present were Party delegates, "[t]he Communists were represented not alone by the Party and its youth section but by a hundred and one bogus organizations, known among radicals as 'innocents' clubs." Tyler, p. 11. By their tactics the Communists managed to insinuate themselves into all the other organizations present, and sought to elect a national executive committee made up entirely of their members. An official of the Farm-Labor Party stated: "What the Communists have done is on the level of a man being invited into your house as a guest then, once in the house, seizing you by the throat and kicking you out of the door." *Id.* at 11–12. This incident illustrates the use of affiliated front organizations to capture and influence a mass organization and in turn convert it into a front.

Front organizations must serve the Party's interests, and once they have served their purpose they are either cast aside or reoriented toward another goal. The United Farmers League was created in the 1920's as the Communist Party's own agrarian organization. When it became evident that the League was not succeeding, the issue arose within the Party whether to abandon it and concentrate on infiltration into other farm groups. C. Hathaway, a Party member, opposed abandonment because the League's use as a front was not exhausted (Hathaway, "Let Us

Penetrate Deeper into the Rural Areas," *The Communist,* July, 1935):

> There is no doubt that tendencies toward liquidation of the UFL reflect a desire to duplicate the changes made in our trade union policy. This in some cases has been furthered by the correct directives given to our farm comrades to concentrate on the penetration of the mass farmers' organizations. [But] the main problem is to utilize the UFL as an instrument for the development of the United Front with other farm organizations, locals, county bodies, etc., which are ready to fight on the basis of a class struggle program.

Thus, the continued existence of the League had the advantage of permitting its Communist leaders to participate in and perhaps influence the policies of other farm organizations.

The Communist Party has also attempted infiltration and front tactics in the field of labor. A great amount of Communist effort has been spent in this country in an effort to control labor unions. An equal or greater amount of effort has been spent by non-Communist labor leaders in the largely successful attempt to frustrate this. A report of a C.I.O. committee explains the Party's techniques ("Report of the Executive Board Committee Appointed by President Murray to Investigate Charges against International Longshoremen's and Warehousemen's Union," (*Official Report on the Expulsion of Communist Dominated Organizations from the C.I.O.,* C.I.O. publication No. 254 [hereinafter CIO], p. 101):

> The techniques used by the Communist Party in achieving control of a union and in then using the union for its purposes vary according to the nature of the industry, the tradition of the union can be subjected to rigid control. As these factors change from time to time, the operation of the Party group within the union (ie. the 'Party fraction') changes to meet the

> new situation. Although the Party fraction functions in a highly mechanical fashion on the theoretical level, accepting without question the line handed down from above, its tactical maneuvering may shift from day to day and even from meeting to meeting depending upon the particular needs of the moment. Thus, the operation of the Party fraction within one union may be completely different from that within another union. In all cases, however, the Party fraction in the union acts as a disciplined group and takes the orders of the day from the Party functionary assigned to or responsible for trade union work.

The Communist Party made a major attempt to infiltrate and control the United Automobile Workers in the 1940's and 1950's. Walter Reuther, the union's president who led the fight against this effort, has described the issues (*Selected Papers* 25, 28):

> We understood that the alternative to a finish fight was Communist control of our union. * * *
>
> * * * * *
>
> This fanatical preoccupation with conquest of organized labor, this elaborate apparatus of propaganda and disruption, the Stalinists, over the past several years, have brought to bear on the United Automobile Workers, which they regard as the strategic union of the CIO.

The methods followed by the Party are described by Reuther in some detail (*id.* at 29):

> During the twelve years the UAW-CIO has existed as an international union, the Communists have placed only one party member in the top leadership and only two of the faithful on our International Executive Board. Yet they have prospered in our midst until recently, because they so skillfully cultivated persons who could be made, in some degree, to serve their

> purposes. It was through clever manipulation of such people that the Stalinists acquired an influence in the UAW vastly disproportionate to the numbers of their convinced adherents.
>
> Working through such strategically placed victims, the Communists captured the leadership of a number of local unions and could count on assistance from certain members on the regional and international union staffs. Machine-made resolutions, promoting the Communist line would pop up at union meetings, and Communist adeptness at parliamentary maneuver would get them by an unalerted membership.
>
> The Communists are highly skillful in using the forms of democracy to subvert democracy. But in local after local union, non-Communist members, gradually and after many painful experiences, awoke to the Party's contempt for the rank and file, to its methods of discouraging attendance at meetings, to its whole strategy of spreading conflict and sowing confusion.

In 1947, the Communists attempted unsuccessfully to merge the Farm Equipment Workers' Union, which they controlled, with the United Automobile Workers (*id.* at 29–31):

> The Stalinists suffered their first crucial preconvention defeat when their proposal to merge the Communist-dominated Farm Equipment Workers with the UAW was rejected by UAW local unions.
>
> In the summer of 1947, a committee of UAW opposition board members had been meeting secretly with officials of the FE [Farm Equipment]–CIO. Without prior notice, they presented to a UAW Executive Board meeting a plan for merging the two organizations, both of which have jurisdiction in the agricultural implement industry. * * *
>
> The FE merger proposal was a complete

fraud. Its sponsors had only one objective: to bring five hundred additional left-wing votes to bear in the UAW convention, then less than five months away. It did not provide for a true merger at all, but rather for the temporary establishment of a union within a union. Grant Oakes, FE president, admitted to a *Daily Worker* correspondent that the plan, if carried out, would set up a "powerful and autonomous FE Division of the UAW–CIO, throughout the U.S. and Canada."

The FE was to enter the UAW with its staff intact; FE members, together with UAW members in the farm implement industry, were to be given special membership cards in an "FE Division" of the UAW; the whole plan was in violation of the UAW constitution and organizationally unsound. It would have meant a retreat from industrial unionism to craftlike autonomy at a time when the industrial form of organization was under attack from Congress. But the Communists didn't care. They were making a bid for control of the nation's biggest union. This was the showdown.

The plan was approved by the left-wing majority of the UAW Executive Board. UAW locals were given less than a month to debate the issues and set up a poll in which no alternative set of proposals would be available. Those of us in the leadership and ranks who favored real merger but opposed the provisions of the left-wing plan were placed in the uncomfortable position of blocking "unity."

During 1949 and 1950, the C.I.O. expelled from its ranks eleven international unions which had been found to be Communist-dominated on the basis of full hearings. For example in 1950, an investigating committee, appointed by C.I.O. President Philip Murray, found that (CIO, pp. 111, 115):

The absence of any conflict between the position of the Party and the position of this

> Union under the leadership of its international officers and board, is, therefore, of great significance. The constant parallel between the position of the Communist Party and the position of the ILWU cannot possibly be explained as coincidence, or as the simultaneous but independent adoption of similar policies. For the policies of the Communist Party, as we have stated, have undergone repeated violent shifts which are explainable only on the basis of the party's subservience to the interests of the Soviet Union. And the policies of the ILWU have, in each instance, undergone the same sinister shift.
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> * * * * * *
>
> * * * [T]he policies of the International Longshoremen's and Warehousemen's Union are consistently directed toward the achievement of the program and the purposes of the Communist Party rather than the objectives and policies set forth in the CIO constitution.

The committee found that Party members and functionaries controlled the Longshoremen through key positions in the Union and directed Union policies and activities to Communist purposes. Substantial evidence showed that even non-Communist Union officials took directions from Communist Party officials in determining Union policies (*id.* at 111, 113):

> The documentary evidence of the subservience of ILWU, through its top leadership, to the Communist Party was corroborated by the oral testimony of Mr. Quill and Mr. Stone, both of whom gave testimony showing direct Communist control of ILWU. Both testified that Harry Bridges had, over a period of years, participated in numerous secret meetings between Communist Party functionaries and officers of Communist-controlled unions in the CIO at which the party functionaries in-

> structed the union officers as to the party line and as to the positions that they were to take in the CIO and in their unions. Needless to say, these meetings were concealed from the CIO and from the rank-and-file membership of the unions. Such meetings took place from the inception of the CIO, and continued, to Mr. Stone's knowledge, until 1945, and, to Mr. Quill's, until 1948, those being the dates of their respective breaks with the party. Such meetings took place contemporaneously with every CIO convention, and were often held at the time of CIO executive-board meetings. The party functionaries who participated in these meetings included Eugene Dennis, William Z. Foster, John Williamson, Roy Hudson, Robert Thompson, Jack Stachel, and William Schneiderman.
>
> * * * * * *
>
> Quill and Stone testified, and the committee finds, that Bridges did participate in Communist Party fraction meetings and did receive at these meetings instructions from party representatives as to the line that was to be carried out, not only in the ILWU itself but also within CIO. The documentary evidence, almost all of its official ILWU material, further clearly proves that the efforts of the party to control the policies of ILWU were highly successful.

The report emphasizes that Communist control of union leadership did not necessarily mean that rank-and-file members were themselves Communists or were even aware of the promotional and propaganda purposes for which their union was being used by its leaders (CIO, p. 114):

> The committee wishes to make it perfectly clear that its findings as to ILWU are based, as they must be, on the policies and activities of the union under the leadership of its present international officers and executive board.

> Those findings carry no implication that the individual members of the union are Communists or favorable to communism. To the contrary, the committee is persuaded that many of the members of ILWU have been taken in by the evasion and the subterfuge, the devices and the maneuvers, which the Communist-minded leaders of this union have used to maintain themselves in power, concealing all the while the fact that the union's policies and activities were not the real informed decision of the members but determined in accordance with the line of the Communist Party.

Similarly, the investigating committee found as to the United Public Workers that (CIO, p. 55):

> The members of the UPW are, in the main, Government employees. Although the persistent Communist Party line tactics of its leadership have driven out of the UPW the major portion of its American membership, the committee has no doubt that there still remain within the union members who are fooled by the pseudo-unionism and the false militancy of the UPW leadership. And there are undoubtedly others who have opposed that leadership but have remained within the union. But the committee wishes to make it crystal clear that its condemnation of that leadership, and of the union, does not necessarily reflect the condemnation of each individual member. But the committee is forced to conclude that the leadership of the union has directed and does direct the policies and activities of the union consistently toward the achievement of the program and purposes of the Communist Party.

Another union investigated and expelled from the C.I.O. at the same time was the United Office and Professional Workers. As in the case of the Longshoremen, the Office Workers adopted political poli-

cies and attitudes strikingly parallel to those of the Communist Party (CIO, pp. 61–62):

> Never in the history of the UOPWA has any policy ever been adopted which in any way runs counter to the policies of the Communist Party or to the interests of the Soviet Union as those interests are reflected in the program of the Communist Party. If the Communist Party program had been a consistent one, this absence of conflict might not be significant. But, in view of the fact that in a period of ten years the Communist Party has taken almost every conceivable position on every issue of public importance in the United States, the absence of any conflict between the position of the party and the position of this union is of great significance.

More specifically, the committee said that the Union's positions were the same as those of the Party concerning the withdrawal of United States troops from China and Greece; the Truman Doctrine; the Marshall Plan; and the Atlantic Pact. The committee concluded that (*id.* at 68):

> The history of this union, when compared with the history of the Communist Party on the one hand, and, on the other hand, with any possible straightforward trade-union position, demonstrates beyond question the present character of the UOPWA's leadership and shows beyond doubt that the present similarity of the program of the Communist Party and of the UOPWA is not just a coincidence but the result of devotion by this union to the over-all purposes of the Communist Party rather than the objectives of the CIO.

Another union investigated by and expelled from the C.I.O. was the National Union of Marine Cooks and Stewards. The C.I.O. investigating committee

found that: "At no time during the 12-year period since 1938 has there been one single instance of MCS' deviating in any substantial degree from the line of the Communist Party." CIO, p. 120. The committee described the basic issue in the following terms (CIO, p. 125):

> The issue posed by the charge against MCS is whether it is an honest trade union, genuinely devoted to the advancement of the cause of American labor and American democracy, or a union whose policies and activities are determined by the philosophy and the program of the Communist Party. The issue is one of basic loyalty. The purposes of the Communist Party are wholly antithetical to the basic objectives of American industrial unionism. And the question as regards MCS is whether that union is devoted primarily to the CIO on the one hand or to the Communist Party on the other.

The committee found that the Marine Cooks and Stewards Union was totally subservient to the interests of the Communist Party. *Ibid.* The C.I.O. investigating committee likewise concluded concerning the American Communications Association that (CIO, p. 83):

> The ACA has followed the tortuous paths of the Communist Party for years. Over the years it has been interventionist, isolationist, interventionist and then isolationist again. It has been pro-Roosevelt, then anti-Roosevelt, then pro-Roosevelt again. And ACA's occupancy of these positions has invariably coincided with the Communist Party's tenure of them. ACA's contradictory positions cannot possibly have resulted from any honest estimation of the interests of its membership. They can only have resulted from subservience to the interests of the Communist Party, and through that party, to the Soviet Union.

Similar findings were made by C.I.O. investigating committees concerning the International Union of Mine, Mill, and Smelter Workers (CIO, p. 11); the Food, Tobacco, Agricultural, and Allied Workers of America (CIO, p. 23); and the International Fur and Leather Workers Union (CIO, p. 84).

At its convention in 1949, the C.I.O. adopted resolutions expelling the United Electrical, Radio and Machine Workers and the Farm Equipment Workers from that organization. As to the Electrical Workers, the resolution adopted the following finding (CIO, p. 6):

> The UERMWA has been selected by the Communist Party as its labor base from which it can operate to betray the economic, political, and social welfare of the CIO, its affiliates and the general membership. The program of the UERMWA leadership that has gradually unfolded is but an echo of the Cominform. At the signal of the Cominform, the Communist Party threw off its mask and assumed its true role as a fifth column. Its agents in the labor unions followed the Communist Party line. The UERMWA leadership abandoned any pretense of loyalty to the CIO and its program. The record is clear that wherever the needs of the Communist Party in the Soviet Union dictated, the leadership of the UERMWA was always willing to sacrifice the needs of the workers. The evidence, known to every CIO member, is overwhelming * * *.

According to the C.I.O. resolution, the leadership of the Electrical Workers, in defiance of C.I.O. officials, secretly arranged a merger with the United Farm Equipment and Metal Workers as the first step in the long-range plans of the Communist Party to establish a Communist-dominated labor federation in America.

The following succinct description of Communist tactics in the domination of trade unions is found in a work describing the C.I.O.'s struggle with attempted Communist domination (Kampelman, *The Communist Party vs. The C.I.O.* 7):

> Disciplined and organized as a solid phalanx, they joined freely in argument and parliamentary maneuver for which they are well trained. They are good at fighting delaying actions and often succeed in wearing out the opposition. When they are not able to out-maneuver their opponents, they are likely to prolong union meetings until many members, exhausted and sleepy, leave for home. As they do, the Communist tide rises. Communists arrive early and stay late. The later the hour of the vote, the greater the likelihood of the Communist Party bloc prevailing. With few exceptions a cardinal principle of Communist policy is to deny charges of Communist identity or influence.

An illustration of a front used by the Communists to appeal to ethnic groups is the International Workers Order. Founded ostensibly as a mutual benefit society in 1930, the Order stressed insurance, social, and educational programs principally for various immigrant groups. Selznick, pp. 115–117. The I.W.O. originally cooperated openly with the Communist Party in the United States. But the Party soon decided that "the organization could be used as a specialized weapon to attain specific objectives, rather than remain simply a sort of political halfway house." *Ibid.* More specifically the I.W.O. was used to influence nationality groups to exert pressure on the United States government to adopt policies toward their home countries which would prove favorable to the world Communist movement. The method is

described in Moore, "The Communist Party of the U.S.A.: Analysis of a Social Movement," *American Political Science Review,* February 1945, p. 38:

> Among immigrants from Europe, the CPUSA and its sympathizers form a distinct political *bloc* within each national or ethnic group, agitating on behalf of Soviet interests as they relate to this group. * * * As a rule, the bloc is represented by a foreign-language newspaper closely following the party line as laid down by the Daily Worker. At present there are just short of 30 foreign-language Communist-line newspapers, with a total circulation of over 400,000. Further activities among East-European and Italian immigrants follow the established pattern of social gatherings and political activities focused around mutual benefit insurance societies. The I.W.O. with a membership of nearly 136,000 scattered amongst these ethnic and cultural groups, represents the Communist faction in each of them.

Besides labor, farmer, and ethnic fronts, and other fronts in the United States have been created to appeal to veterans, youth, economic groups, racial groups, minority groups generally, women, the aged, or the unemployed. Another approach is to create a front group to deal with a particular issue or problem as it arises. This is usually called an *ad hoc* front and is often used to promote interest in the defense of alleged espionage spies or of Communist leaders accused of crimes. See Appendix C below.

These various kinds of fronts perform numerous, different functions. For example, Theodore Draper describes how the Communist Party used front organizations to take advantage of the unsettled situation after World War I in the labor movement (Draper, p. 13):

> A series of big, unusually violent strikes erupted all over the country. Three of them were raging simultaneously in February 1919. In Seattle, Washington, the first American general strike closed down the entire city. In Lawrence, Massachusetts, over 30,000 textile workers shut down every mill in the city for sixteen weeks. In Butte, Montana, for the third time in three years, the miners walked out in rebellion against a wage cut. In some places, the terminology of the Russian Revolution was noticeable. In Butte, Montana, the strike was controlled by "The Soldiers', Sailors', and Workers' council" to which every union except that of the engineers was affiliated. In Portland, Oregon, John Reed's birthplace, a "Council of Workers, Soldiers, and Sailors" was formed "to strike the final blow against the capitalist class." The Portland "Soviet" inspired the *Soviet World* of Philadelphia to predict the birth within the next two years of the Socialist Soviet Republic of the United States of America. Both "Soviets" expired with the strikes. Only the Lawrence strike succeeded in winning any concessions for the workers but for a while the whole labor movement seemed to be rocking with the split of the revolt.

Besides creating unrest, a front may be used to produce and disseminate political propaganda. Frequently, this propaganda supports Soviet foreign policy. A government's own declarations about its own good intentions, or those of the American Communist Party concerning the Soviet Union, are easily discounted as obviously self-serving. However, an "independent" organization whose stated aims are "international understanding," "peace," and the "welfare of mankind" is able to take a position favorable to Communist policies and thereby influence the thinking of those who are unaware of that organiza-

tion's true loyalties and allegiance. Kirkpatrick, *Target the World* [hereinafter Kirkpatrick] 29. Such propaganda by a front group aids Communist objectives in two ways (*id.* at 30):

> Here is a modern Communist version of the "Mister Gallaher and Mister Shean" vaudeville routine. The Front group passes a resolution, for example, to ban tests of atomic weapons. The U.S.S.R. quickly responds to the "will of the people" and calls officially for such a ban. Or, on the other hand, the USSR officially proposes a disarmament plan, and the Front soon thereafter passes a similar resolution, thus providing "popular support" for the Soviet proposal.

This approach was particularly successful during World War II to encourage popular support of the Russian military effort and since the war to arouse sympathy for the Soviet "Peace Offensive."

Front organizations also constitute unusually convenient arenas for the proselytization of new members for the Communist Party. Once attracted into active participation in the front's program, the newcomer can be slowly drawn into the Party through indoctrination. Kintner and Kornfeder, *The New Frontier of War* 49–50; Kirkpatrick, p. 30; Overstreet, p. 169.

And finally, front organizations have served as successful fund-raising devices for the Communist movement. A great number of persons unwilling to contribute directly to the Communist Party will make donations to groups operating under the banners of "civil liberties," "peace," or "freedom." Much of the funds raised by front groups does not go "to the cause for which the group publicly is working. In some cases funds raised for a so-called worthy cause are diverted to the Communist Party by direct theft

and dishonest bookkeeping transactions. In other cases money is diverted by payment of large sums to Communist agents, lawyers, publicists and workers within the particular group, who turn over substantial amounts of their wages and fees to the Party." Fourth Report of the Senate Fact-Finding Committee on Un-American Activities of the California Legislature (1948), quoted in Selznick, p. 122.

BIBLIOGRAPHY

Almond, *The Appeals of Communism* (1954)

Bauer, *The New Man in Soviet Psychology* (1952)

Chamberlin, *Blueprint for World Conquest* (1946)

Chambre, *From Karl Marx to Mao Tse-Tung* (1963)

Dallin, *Diversity in International Communism* (1963)

Daniels, *A Documentary History of Communism* (1960)

Degras, *The Communist International, 1919–1943: Documents* (1956)

Delaney, *Literature of Communism in America* (1962)

Dimitroff, *The United Front: The Struggle Against Fascism and War* (1938)

Draper, *The Roots of American Communism* (1957)

Ernst and Loth, *Report on the American Communist* (1952)

Evans, *Worldwide Communist Propaganda Activities* (1955)

Fundamentals of Marxism-Leninism (Dutt ed., 1961)

A Handbook of Marxism (Burns ed., 1935)

Hulse, *The Forming of the Communist International* (1964)

Hunt, *The Theory and Practice of Communism* (1957)

Hyde, *The Peaceful Assault: The Pattern of Subversion* (1963)

Kabes and Sergot, *Blueprint of Deception* (1957)

Kintner and Kornfeder, *The New Frontier of War* (1962)

Laski, *Communism* (1927)

Lenin, *Collected Works* (International Publishers, 1927)

Lenin, *Marx, Engels, Marxism* (Foreign Language Publishing House, 1951)

Lenin, *Selected Works* (Foreign Language Publishing House, 1943)

McNeal, *Lenin, Stalin, Khrushchev* (1963)

Meyer, *The Moulding of Communists* (1961)

Nollau, *International Communism and World Revolution* (1961)

O'Neal and Werner, *American Communism: A Critical Analysis of Its Origins, Development and Programs* (1947)

Overstreet and Overstreet, *What We Must Know About Communism* (1958)

Rossiter, *Marxism: The View from America* (1960)

Scott, *The Anatomy of Communism* (1951)

Selznick, *The Organizational Weapon: A Study of Bolshevik Strategy and Tactics* (1952)
Stalin, *Foundations of Leninism* (International Publishers, 1932)
Stalin, *Problems of Leninism* (International Publishers, 1942)
Tyler, *The United States Front* (1947)

See also S. Doc. No. 69, 88th Cong., 2d Sess., "World Communism, A Selected Annotated Bibliography" (1963), prepared by the Legislative Reference Service of the Library of Congress.

APPENDIX C

OTHER COMMUNIST-FRONT CASES BEFORE THE BOARD[1]

1. *American Peace Crusade* (Board Docket No. 117–56).—The American Peace Crusade was formed by members of the Communist Party to promote sympathy for Communist peace appeals and for other Party positions. More specifically, it promoted reconciliation with Communist China, cessation of the Korean War, total disarmament, and the convening of a peace conference. The goals were pursued through rallies, mass marches and pilgrimages, petitions and special appeals, union resolutions, and national conventions. The Crusade's connection with the Party was not disclosed to those from whom it solicited support. See *Haufrecht* v. *Subversive Activities Control Board*, 322 F. 2d 403 (C.A. D.C.).

2. *California Labor School, Inc.* (Board Docket No. 115–53).—The School was formed from a pre-existing Communist Party school known as the "Tom Mooney Labor School." The administration and staff of the California Labor School consisted largely of Communist Party members. The School was intended to teach Party members how to eliminate "Browderism" and "revisionism," and to re-establish the Marxist-Leninist revolutionary line. Much of the instruction

[1] The material in this Appendix is taken from the reports of the Board. We have described all the cases in which the Board has determined an organization to be a Communist front except that of National Council of American-Soviet Friendship, Inc., in which the court of appeals reversed for insufficiency of the evidence. *National Council of American-Soviet Friendship* v. *Subversive Activities Control Board*, 322 F. 2d 375 (C.A. D.C.).

755-587—64——16

given at the School centered on the problems of minorities, particularly racial groups, in the United States. Party members were instructed to use the School as a means of recruiting members of labor organizations into the Party. The School was unusual for a front since, except for its name, little effort was made to conceal its connection with the Party. See *California Labor School* v. *Subversive Activities Control Board,* 322 F. 2d 393 (C.A. D.C.).

3. *Civil Rights Congress* (Board Docket No. 106–53.)—The Congress was formed by a merger of organizations such as the International Labor Defense (an affiliate of the International Red Aid, an international Communist organization with headquarters in Moscow), the National Federation for Constitutional Liberties, and the National Negro Congress. The Congress, which was under Party domination and control, devoted most of its energies to the defense of the Party leaders indicted under the Smith Act. These activities included mass protests, distribution of literature and petitions, and arrangement for attorneys and bail funds. It also sought repeal of the Smith Act, abolition of Congressional investigations of subversive activities, and the defeat of legislation detrimental to the Party. The Congress helped the Party through its ability to appeal to the public, particularly for funds, under the guise of an organization devoted to civil liberties, with no connection with the Party, in situations where the Party itself could gain little or no support. See *Patterson* v. *Subversive Activities Control Board,* 322 F. 2d 395 (C.A. D.C.).

4. *Jefferson School of Social Science* (Board Docket No. 107–53).—Every member of the School's Board of Trustees since 1950 has been a Communist Party member as were the large majority of its administrative staff. The School was used by the Party

to instruct its members on racial and economic problems in this country in order to prepare them to take advantage of disturbances which might arise. After 1945, the Party gave much attention to the recruitment of prospective students from the Negro and industrial communities for the purpose of indoctrination and future enlistment in the Party. As graduates of the Jefferson School and as Party members, such persons would then be qualified to perform vital functions of recruitment, agitation, and organization within their respective communities. The School attempted to give the impression that it merely taught patriotism and was not connected with the Party. See *Jefferson School of Social Science* v. *Subversive Activities Control Board*, 331 F. 2d 76 (C.A. D.C.).

5. *Labor Youth League* (Board Docket No. 102-53).—The League was governed by a National Council, a majority of whom were Communist Party members, and administered by a National Chairman, who originally was National Youth Director of the Communist Party. The Communist Party created the Labor Youth League in 1949 as a separate, non-Party youth organization, based on principles of Marxism-Leninism, to educate young people in the "spirit of socialism." Members of the League were urged to take courses in the Jefferson School of Social Science as preparation for their eventual induction into full Party membership. The League published a newspaper and a magazine, both of which advanced the Marxist cause and espoused principles of "scientific socialism." As part of its program of "education" and indoctrination, the League consistently praised the Soviet Union and criticized the United States, and agreed with the Communist Party on all foreign and domestic issues. The League concealed its subordination to the Party. See *Labor Youth League* v. *Sub-*

versive Activities Control Board, 322 F. 2d 364 (C.A. D.C.).

6. *United May Day Committee* (Board Docket No. 111–53).—The Committee was created by the Communist Party shortly after the Second World War and its officers were consistently Party members. Most of its activities were conducted during brief periods each year in preparation for May Day celebrations, primarily in New York. The Committee employed racial, political, and economic slogans and themes appealing to as many labor groups as possible in order to form a broad base of operations and to present the image of unanimity of all participating organizations. Party members controlled the preparation of literature, solicitation of finances, and arrangements for speakers and program. Secret control of the annual May Day demonstrations permitted the Party to profit by the prestige of legitimate mass organizations and to gain access for propaganda purposes to a vast number of non-Communist workers. See *Weinstock* v. *Subversive Activities Control Board,* 331 F. 2d 75 (C.A. D.C.).

7. *Washington Pension Union* (Board Docket No. 114–55).—The Pension Union was established originally to provide pension protection for the elderly. The Communist Party undertook to infiltrate and gain control of the organization in its formative years, and, after a Party member became executive secretary and later president of the Union, activities were divided between support of programs for the elderly and support of the Party and its goals. The Union took positions on foreign and domestic affairs, unrelated to its purported purposes, but consistent with positions of the Party. Its opposition to the Smith Act prosecutions was pointed to by the Party as evidence of popular opposition to the trials. The

Pension Union was used by the Party to expose a large group of people to Communist propaganda since the Union concealed its Communist connections. See *Washington Pension Union* v. *Subversive Activities Control Board*, 322 F. 2d 398 (C.A. D.C.).

8. *Connecticut Volunteers for Civil Rights* (Board Docket No. 121–57).—This organization was formed at the direction of officials of the Communist Party by Party members to obtain support for Party officers prosecuted under the Smith Act. Its officers and leaders were members of the Communist Party and its policies were dictated by the Party. Primary attention was given to the raising of defense funds and the circulating of a variety of literature designed to arouse public condemnation of the Smith Act and popular support for those prosecuted under it. The Volunteers did not make its connection with the Communist Party known to the general public whose support it sought.

9. *California Emergency Defense Committee* (Board Docket No. 123–57).—The association was founded by the Party in 1951 primarily to provide legal and financial aid for leaders of the California Communist Party indicted under the Smith Act and to agitate against such prosecutions. The Committee consolidated the efforts of a variety of smaller defense committees, each one previously formed by the Party to arouse support for an individual defendant or to seek public approval in a specific locality. The Committee's initial co-chairman and a number of subsequent important officers were members of the Communist Party. Other Party members were assigned to liaison positions between the Committee and the Party and as area coordinators and supervisors for the Committee. At each stage of the Committee's activities the Party issued assignments and directives

to the Committee to insure control of those activities, and reports on the success of the Committee were made at Party meetings. The Committee was also used as a recruiting ground to attract and indoctrinate non-Communists for future Party membership. The Committee did not publicly acknowledge its affiliation with the Communist Party.

10. *Colorado Committee to Protect Civil Liberties* (Board Docket No. 120–57).—The association was founded in 1954 under the leadership, and with the financial assistance, of the Communist Party in Colorado. Operating under the control of a tightly-knit group of Party members, the Committee devoted itself almost exclusively to generating public support for the defense of Communist Party leaders prosecuted in Colorado under the Smith Act. Like its sister "defense" organizations throughout the United States, the Committee was formed for the purpose of eliciting contributions and sympathy from the great portion of the public not normally concerned with the legal welfare of Communist Party officials. The Committee attempted to suggest that it was concerned with the rights of everyone and therefore did not disclose to the public its commitment to Communism. See *Blau* v. *Subversive Activities Control Board,* 322 F. 2d 397 (C.A. D.C.).

11. *Advance and Burning Issues Youth Organizations* (Board Docket No. 126–63).—Advance was founded as a result of extended discussions within the Communist Party during 1959 concerning the need for a Marxist youth organization within the Party apparatus in this country in order to attract and indoctrinate new converts and train new leaders. It merged in 1962 with a similar organization, Burning Issues.

Five of the seven original officers of Advance were Communist Party members, and in 1961 all seven officers were Party members. Party leaders considered Advance as the youth division of the Party in this country. There was constant communication and inter-change of personnel between the Party and Advance. This organization was intended to be broad enough in scope to include non-Communist as well as Communist young people. Advance advocated such policies as equalization of income throughout the world, abolition of the draft, unilateral disarmament, "hands off Cuba," and other domestic and foreign relations policies similar to those advocated by the Communist Party. The connection of Advance with the Party was concealed from the general public.

12. *Veterans of the Abraham Lincoln Brigade* (Board Docket No. 108–53).—This organization is described in the government's brief in No. 65, this Term.[2]

[2] The Attorney General filed eight petitions with the Board for orders requiring additional organizations to register as Communist fronts, which were dismissed on motion of the government because of the dissolution of the groups. These organizations were: *International Workers Order, Inc.; American Slav Congress; Committee for a Democratic Far Eastern Policy; Joint Anti-Fascist Refugee Committee; Council on African Affairs; National Negro Labor Council; Save our Sons Committee;* and *Committee to End Sedition Laws.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, *Petitioner*,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONER

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INDEX

	Page
1. The activities and "purposes" of the American Committee	1
2. The invalidity of the Act by reason of the Board's construction of the aid component	6
3. Divorcing the Board from its order; the "disclosure" justification	11
4. The means component—motive or acts	13
5. The vicarious liability issue	15
6. The self-incrimination issue	16
7. Evidentiary matters	17
(a) The origin of the American Committee	17
(b) The reservoir conclusion	18
(c) Hearsay and opinion evidence	20

CASES CITED

Albertson and Proctor v. S. A. C. B., No. 265, Oct. T., 1964	17
American Communications Assoc. v. Douds, 339 U.S. 382	10
Aptheker v. Secretary of State, 378 U.S. 500	10
Bridges v. Wixon, 326 U.S. 135	20
Cantwell v. Connecticut, 310 U.S. 296	12
Communist Party v. S. A. C. B., 367 U.S. 1	16
Consolidated Edison Co. v. N. L. R. B., 305 U.S. 197, 230	20
DeJonge v. Oregon, 299 U.S. 353	10
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123	12
Scales v. United States, 367 U.S. 203	10
Talley v. California, 362 U.S. 60	13

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1. The Activities and "Purposes" of the American Committee

The government's brief tends to submerge the issues beneath its shopworn, pseudo-historical dissertations on Communism and its supposed tactics, principles and dangers. There is also a danger of ascribing to the American Committee the government's irrelevant

animadversions about Communist-fronts in the abstract—as that such organizations "have attempted to arouse support for Soviet foreign policy," "have also been sources for the recruitment of Party members," and "serve the Communist movement by collecting funds for it" (Resp. Br. 35). Finally, when the government's brief does descend to a discussion of this case, its version of the findings and evidence is distorted and inaccurate.

In the hope of returning this case to its actualities, it is desirable to again consider just what the American Committee does, or has been found to do, to incur the registration death sentence. This is important not only for questions of constitutionality, but also to determine whether the American Committee meets the Act's definition of a Communist-front organization, properly interpreted.

By definition (Act, sec. 3(4)), a Communist-front organization is one which (A) is substantially controlled by the Communist Party and "(B) is primarily operated for the purpose of giving aid and support to" the Communist Party. The "B" half of this definition, which we call the aid component, brings into question the nature of the organization's activities.

We know that there are certain activities which might conceivably be within the aid component which the American Committee does *not* engage in. The government acknowledges (Resp. Br. 71-72) that the organization does not advocate violent overthrow of the government or "engage in any activities directly involving forcible overthrow." Nor do the Board's Report, the opinion below, or the government's brief point to any proof that the American Committee gave

financial assistance to the Communist Party, promoted Communist ideology,[1] or recruited Party members.[2] These are things the American Committee does not do; it is a little more complicated to discover what it does do that supposedly meets the aid component.

The court below held that the aid component was satisfied by the American Committee's "laudable" efforts in devoting itself "to the protection of the rights of all and any foreign-born who seek its help." Thereby, the court reasoned, the organization aided the Communist Party in two ways. (1) It benefited the Party by defending Party members involved in deportation and denaturalization proceedings. (2) It aided the Party more "subtly," but apparently even more substantially, by defending non-Communists and thus winning for the Party public credit for the American Committee's "good deeds." (Pet. Br. 34-37.)

The second part of the court's theory was not reflected in the Board's Report (see Pet. Br. 37) and is disavowed by the government's brief (p. 81, ftn. 34), since it is manifestly contrary to the government's position that Communist-front organizations hide any connection with the Communist Party. This leaves us with the proposition that the American Committee satisfies the aid component solely by defending, among

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[1] We feel justified in ignoring the peculiar view of the court below that the American Committee promotes "Communist doctrine" by maintaining that the political deportation statutes "were premised on political opinion and threatened the freedom of all American people to their political opinions" (R. 82).

[2] Even if an organization does engage in such activities, it does not satisfy the aid component unless these activities are so predominant as to constitute the group's "primary" operation.

others, members of the Communist Party facing deportation and denaturalization proceedings.[3]

The Board's theory is more obscure. But once we realize that it considered that the aid component depends on an organization's "purpose" (i.e. motivation) rather than its actions (see Pet. Br. 28-34), it appears that the Board's authoritative conclusion as to why the American Committee meets the aid component is stated in the following passage in its Concluding Findings (R. 65):

> "The weight of the credible evidence established that the purposes of respondent have in fact been to fight in many ways to prevent the deportation from the United States of members and officers of the Communist Party of the United States, and secondarily, to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party."

Thus again, as appears from the first clause of this passage, the American Committee is held to meet the aid component because it defends (or has the purpose of defending) Communists (among others) in deportation proceedings.

The second clause of this passage refers to a "secondary" purpose to create a reservoir of possible adherents to the Communist Party. The clause is on its face irrelevant, since the aid component explicitly refers to an organization's *primary* operations (or pur-

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[3] The government says (Resp. Br. 81) that the court below also found that the American Committee aided the Party "by building sympathy" for it. There is nothing in the court's opinion to support this assertion.

pose). In any event, the government's brief confirms our contention (Pet. Br. 80-83) that this "reservoir" conclusion of the Board is not supported by the record or the Board's own evidentiary findings. Considering that the American Committee has been at work since 1933, the only meaningful evidence to support the conclusion would be evidence of instances in which the Communist Party obtained adherents or supporters as a result of the American Committee's good-will reservoir. Neither the Board's Report nor the government's brief cites a single such instance.

The best the government's brief can offer is the vapid speculation that "there is a strong likelihood that this is petitioner's purpose" (Resp. Br. 92). The government thinks that this "strong likelihood" exists because "other evidence shows that petitioner is controlled by the Communist Party and that the Party actively supports petitioner" (*ibid.*). We deny the premise, but even if it were true, the conclusion would not follow. For if, as the Board held, the American Committee's primary purpose is to defend Party members involved in deportation proceedings, it is superfluous to invent an additional reason for Party support of and interest in the organization.[4]

In sum, if the American Committee meets the means component, that is because it defends Communists (as well as non-Communists) in deportation proceedings. This defense activity includes supplying counsel in, and bearing the cost of, the administrative and court proceedings, publicizing the cases, and agitating for the repeal of the political, as well as non-political, deporta-

[4] We later show (*infra*, pp. 18-19) that there is no substance to the government's contention that its "inference is supported by substantial direct evidence" (Resp. Br. 93).

tion laws (see Pet. Br. 9). The issues are whether this activity, or "purpose" if one prefers, satisfies the means component, properly construed, and, if so, whether the Act is constitutional.

2. The Invalidity of the Act by Reason of the Board's Construction of the Aid Component

The activities for which the American Committee has been condemned—its sponsorship of litigation, publicizing of cases, and agitation for reforms of the immigration laws—are all protected by the First Amendment (see Pet. Br. 103). So, of course, is the right of association in the American Committee. There can be no question but that the exercise of these rights is drastically inhibited by the application of the Act to the organization. This inhibition occurs in different stages and various ways.

The initial impact comes with the start of the proceeding. An organization which depends on public support and which seeks to influence public opinion is intolerably handicapped merely by being formally accused of subversion by the government and being required to account for itself before a government agency bearing the Board's ominous name. Next, the proceeding itself, featuring the slanders of professional government informers, further injures the reputation of the organization and obliges it to divert to its self-defense energies and resources which would otherwise be expended to promote its causes. Then the Board's decision, accompanied by a defamatory Report, officially brands the organization. The registration order requires the organization to sacrifice its integrity and privacy by signifying acquiescence in the defamatory designation and by spreading before a now-inflamed public the details of the organization's affairs, includ-

ing the names of its dues-paying members[5] and contributors. And as soon as the registration order becomes effective, there also become applicable numerous severe sanctions on the organization and its members (see Pet. Br. 5).[6]

The net effect of all this—and usually of only part of all this—is to destroy the organization and thereby the ability of individuals to associate in it, the ability of the organization to engage in speech, press and assembly, the ability of the public to hear what the organization has to say, and the ability of persons who would otherwise benefit from the organization's work (here the foreign born) to receive such benefits. Moreover, the application of the Act to any organization—and even the mere presence of the Act on the statute books—inevitably restrains the advocacy and activities of other organizations and the willingness of the public to join organizations (see Pet. Br. 42-43). In short, the Act constitutes an unprecedented and virulent governmental supervision over voluntary associations and the rights of speech, press and association.

We need not repeat our discussion (Pet. Br. 102-05) of which of the Act's restrictions of First Amendment

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[5] It is disingenuous of the government to represent (Resp. Br. 111-13, 132) that the Act is more tender to organizations found to be Communist-fronts than to the Communist Party because it does not require the former groups to disclose the names of their members. Section 7(d) of the Act requires such groups to list the sources of all moneys received, and thereby the names of all dues-paying members.

[6] It is beside the point that the validity of the sanction provisions is not at issue in this proceeding. The mere presence of the sanctions, so long as they have not been held unconstitutional, is a major deterrence to association with and the functioning of the organization.

rights are "direct" and which "indirect," and whether the Act must be tested by the clear and present danger test or by the balancing test. Under any theory, it is clear that at a minimum the Act's conspicuous consumption of fundamental liberties can be constitutional only if there exists a compelling justification for the legislation.

The justification which the Act claims for itself (section 2), and which the government's brief asserts at *inordinate length*, is the need to protect the national security from the assertedly dangerous methods and objectives of the world Communist movement. We are unable to see how any danger to the national security is created by the American Committee's admittedly 'laudable' and peaceable activities in protecting the interests of the foreign born. For this reason, as well as on the basis of other conventional criteria of statutory construction (Pet. Br. 39-49), we believe that the means component, properly construed, excludes application of the Act to the American Committee or other organizations whose work consists of innocent activities directed toward innocent objective. Correctly construed, the Communist-front provisions of the Act apply only to organizations which, in a realistic and reasonably direct manner, aid the Communist Party in carrying out the sinister activities attributed to it by section 2 of the Act.

Our construction does not necessarily mean, as the government innocently assumes (Resp. Br. 71-72) that the only Communist-front organizations within the meaning of the Act are those which advocate or act to effectuate the violent overthrow of the government. The Act may also include, for all we know, organizations which disseminate Communist ideology generally

or which operate to recruit members or raise funds for the Communist Party. But if we are not sure of what the Act includes, we are convinced that it does not, and constitutionally cannot, include an organization whose work consists of peaceably defending the interests of the foreign born, including Communists, even if it also criticizes our immigration laws and their administration by the Department of Justice.

The government justifies applying the Act to organizations engaged solely in "laudable," benign activities by the following reasoning:

1. Communism is a menace to the national security.

2. Therefore the government can restrain Communists from doing anything which might conceivably benefit the Communist movement, even if the activity is so remote from violent overthrow as defending Communists involved in litigation or agitating for causes (such as integration) which are favored by the Communist Party as well as by non-Communists. For reasons we do not comprehend, however, it is assumed that the government cannot apply like restraints to those who, like Wendell Willkie (Resp. Br. 79), are not Communists nor controlled by Communists.

3. The restraints which can be applied to Communists can also be applied to organizations "controlled" by the Communist Party. because such groups are "in effect subsidiaries of the Communist Party" and "an integral part of an organization which supports forcible overthrow" (Resp. Br. 79).

The government's syllogism is outlandish. Under it, the government could not prevent Wendell Willkie from defending William Schneiderman in a denaturalization case, but it could prevent Schneiderman from

defending himself. The government's contention contradicts the principle that whatever power the government has to control speech depends on the nature of the speech, not the identity or affiliations of the speaker. *DeJonge* v. *Oregon,* 299 U.S. 353. Moreover, Communists cannot, merely because they are Communists, be restrained from peaceable association and advocacy (*Scales* v. *United States,* 367 U.S. 203) or from enjoying liberties protected by the due process clause. *Aptheker* v. *Secretary of State,* 378 U.S. 500. The Court has upheld debatable measures aimed at Communism, but always on the thesis that they were directly and immediately pertinent to controlling dangerous acts or advocacy. Cf. *American Communications Assoc.* v. *Douds,* 339 U.S. 382. The Court has never countenanced restraining Communists from peaceably seeking to advance reforms, associating for non-revolutionary purposes, or defending themselves from government prosecutions.

Even if there were some implied exception to the Constitution that Communists and the Communist Party have no constitutional rights, it would be unthinkable to stretch the exception to include organizations which, though concededly consisting mostly of non-Communists (Pet. Br. 47), are found to be "controlled" by the Communist Party. For contrary to the government's argument, the "control" which satisfies the Act is not the kind of relationship which exists between parent and subsidiary corporation or which makes one group an "integral part" of another. Instead, the Act's "control" depends on nothing more than a gossamer, unenforceable, psychological "disposition" (see Pet. Br. 107; Resp. Br. 60-61). And how is this "control" found? Nor by a jury or the judicial process, but by a Board of political appointees

which, according to the government, may derive its conclusions from stale evidence (Resp. Br. 66-67), from the unsubstantiated, conclusory opinion evidence of professional informers (Resp. Br. 84-86), and from hearsay evidence (Resp. Br. 87), but which, nevertheless, must be allowed broad discretion to determine the credibility of witnesses and the admissibility of evidence (Resp. Br. 58) and whose findings must be given great weight (Resp. Br. 57).

3. Divorcing the Board From Its Order: the "Disclosure" Justification

The government urges the Court to consider the constitutionality of the Board's authority to find that organizations are Communist-fronts separately from the constitutionality of the requirement that organizations found to be such must register (Resp. Br. 101-02). In its view, the finding authority can be held constitutional even if the registration requirement is not, as an exercise of Congress' supposed power to disclose to the public the true nature of clandestine groups (Resp. Br. 102-03).

This separation of the Board from its order seems far-fetched, nor can we believe that Congress ever contemplated setting up an executive agency solely for the purpose of supplementing or supplanting the efforts of the House Committee on Un-American Activities.

In any event, the Board's authority to compile a blacklist of organizations is plainly unconstitutional even if it be divorced from the Act's registration requirements. A governmental "disclosure" which consists of stigmatizing an organization constitutes, even without more, a serious deterrence to the exercise of constitutional rights (*supra*, p. 6) and requires justi-

fication. Cf. *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123. And just as the government may not decide for the public what is a religious cause (*Cantwell* v. *Connecticut,* 310 U.S. 296), neither may it determine the suitability of conduct or association protected by the First Amendment.

The Board's determination serves not a disclosure function, but rather the role of attaching an invidious label to frighten away public support. What are the "disclosures" made by the Board's determination? They are, manifestly, two—that the Communist Party "controls" the organization (the control component) and that the organization operates to aid the seditious objectives attributed to the Communist Party (the aid component). These are not facts, but epithets.

The *facts* from which the Board here drew its conclusion as to the aid component did not need to be disclosed by the Board. For the American Committee has always made public to the world its defense of Communist, as well as non-Communist, members of the foreign born community, and its opposition to political, as well as non-political, deportation statutes. So far as the means component is concerned, the "disclosure" contributed by the Board's determination consists of attaching to these activities the invidious label that they are subversive measures. We think this label misinforms the public and is palpably fraudulent. But in any event, the best that can be said for it is that it represents a debatable political opinion decreed by the government, at the expense of the American Committee's survival, as the orthodox and safe position.

Considering the attentuated nature of the "control" which satisfies the Act (*supra,* p. 10), the Board's determination of that element is also no more than an

epithetic opinion masquerading as a statement of fact. Here the Board's conclusion of control is essentially based on a dubious inference drawn from highly questionable evidence that Abner Green was once a member of the Communist Party and in 1942 was preferred by the Party over another candidate for the post of executive secretary of the American Committee. That Green was the executive secretary of the American Committee and its principal figure, and that his speeches and writings exhibited non-conformist views, were never hidden, and did not need to be disclosed by, the Board. There is no basis for finding that Green ever engaged in dangerous activities or utilized his post to do anything contrary to the policies and wishes of his organization and its national conferences. Under these circumstances, the government had no business "disclosing" his private political affiliations. Cf. *Talley* v. *California*, 362 U.S. 60; see Pet. Br. 108. Still less is it justified in attaching a subversive label to the American Committee because of Green's supposed affiliations. No organization is safe if the government can so brand it on the basis of administrative findings that its officers are Communists.

4. The Means Component—Motive or Acts

The Board construed the means component to depend on an organization's motive (called "purpose") rather than on its actual aiding of the Communist Party (Pet. Br. 28-34). For reasons which need not be repeated (Pet. Br. 48-49), we believe this construction is erroneous.

The government's brief states that "on its face, the Act seems to require only a showing of purpose and not of actual aid and support." It suggests, however that the question need not be decided because "there

will rarely, if ever, be a case in which purpose is shown that there is not some actual aid." (Resp. Br. 80.)

The difference between "purpose" (motivation) and actual aiding is not, however, inconsequential. For if it is the latter that counts, the Board must find not merely "*some* actual aid" to the Communist Party, but that aiding the Party was the predominant portion of the organization's work. This is so because the aid component requires that the organization be "primarily operated" to give aid to the Party.

As we have seen, the Board held that the primary purpose of the American Committee was to defend Communist Party members involved in deportation cases. But the Board did not hold that the carrying out of this purpose constituted a primary or predominant part of the organization's activities.

In order to make such a finding, it would be necessary, at a minimum, to determine how many Communists the American Committee defended as compared to the total number of aliens it defended. Abner Green, the one person who was in a position to know the facts, testified that over a twenty-year period, the American Committee defended 3,000 to 4,000 deportation cases, of which about 350 to 400 involved charges of Communist Party membership or affiliation (Pet. Br. 10; Resp. Br. 17). The Board considered that the number of the latter cases "is not necessary or important," but stated, "Other evidence of record indicates a much higher proportion, at least in excess of fifty percent" (R. 58, ftn.). The Board, however, did not identify this "other evidence," and we know of none.[7]

[7] It is typical of the government's brief that it cites the Board's estimate as an established fact, though without citing any evidentiary basis for the estimate (Resp. Br. 16, 18, 83).

Both Green's estimate and the Board's involved cases in which the *accusation* was of *past or present* Party membership. Thus the estimates include cases in which the accusation was unfounded (as in Soldo's—Pet. Br. 11-12) or was of long-past membership. There is thus no basis in either the evidence or the findings to hold that the American Committee "primarily operated" to defend members of the Communist Party.

5. The Vicarious Liability Issue

The government claims (Resp. Br. 3, 146) that we did not raise in the petition for certiorari our contention (Pet. Br. 53-56) that the Act was unconstitutionally applied by holding the American Committee vicariously liable for the acts and personnel of Area Committees with which the American Committee cooperated, but which it did not control.[8]

The claim is without substance. Our constitutional contention is clearly included in the first of our Questions Presented (Pet. 2; Pet. Br. 2), which is: "Whether the provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face or as applied in this case." And more specific notice was given in the seventh Question Presented (Pet. 3; Pet. Br. 3): "Whether an organization may be found to be a Communist-front organization on the basis of evidence and findings concerning other organizations with which it cooperates but which it does not control." Again, in the body of the petition for certiorari (p. 30, emphasis supplied), we stated: "We think that the Act does not authorize,

[8] The Board's holding was based on an erroneous construction of section 3(2) of the Act. The court below affirmed the Board's holding, but without mentioning section 3(2). Pet. Br. 50-53.

nor does the Constitution permit, imposing liability on an organization for the conduct of other organizations with which it is 'intermeshed'—whatever that means—but which it does not control."

6. The Self-Incrimination Issue

The government also asks the Court not to consider our contention (Pet. Br. 112-13) that the Act conflicts with the privilege against self-incrimination, on the ground that, "Since this contention was not raised below this Court should consider it only in exceptional circumstances" (Resp. Br. 149).

Our brief expressly stated (p. 112) that consideration of our contention would require the Court to overrule its holding of prematurity in *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 105-10. The government agrees, although it seems to think that it originated the idea, saying: "Indeed [*sic*], petitioner's argument, as we will show [*sic*], would require overruling of the decision in the *Communist Party* case." The government adds: "It is particularly inappropriate, we submit, to consider overruling a recent determination by this Court, where the litigant has not even raised the issue below." (Resp. Br. 149.)

We cannot follow the government's reasoning. Nothing could be more "inappropriate" than to require litigant to indulge in the futility of urging a court of appeals to exceed its authority by "overruling a recent determination by this Court."

In reply to the government's contention that registration dotes not compel self-incrimination of an organization's officers (Resp. Br. 154-62),[9] we adopt the

[9] The initial issue, we think, is whether the registration order against the Communist Party violates the privilege of the officers of that organization (see Pet. Br. 112).

arguments made in the petition for certiorari (pp. 9-10) and the memorandum replying to the opposition to the petition (pp. 3-6), filed in *Albertson and Proctor* v. *S.A.C.B.*, No. 265, Oct. Term, 1964.

7. Evidentiary Matters

a. The Origin of the American Committee

In claiming evidentiary support for the Board's conclusions on both the support and aid components, the government's favorite morsel is that the American Committee "grew out of" the International Labor Defense (ILD) (Resp. Br. 4, 13-14, 22, 24, 61, 83, 93). This assertion as to the origin of the American Committee is irresponsible and rests on a misrepresentation, which can hardly be inadvertent, of the Board's findings.

The government states in a footnote (Resp. Br. 4-5) that, "While the Board did not explicitly find that petitioner arose from the International Labor Defense," the Board "concluded" that the ILD's Committee for Protection of Foreign Born "was the same as" the American Committee.

In fact, the Board's Report contains no finding or conclusion, either explicit or implicit, that the American Committee grew out of, was the same as, or ever had any kind of connection with the ILD or any ILD committee. The Board's only finding as to the origin of the American Committee was that the organization has existed "since in or about 1932 or 1933" (R. 20).

At a later point, in discussing activities *of the Communist Party* in the foreign-born field, the Board related (R. 37) that in 1932 there was established "a Council or Committee for Protection of Foreign Born

to take over and relieve the ILD of the technical work (legal defense, bail, etc.) in deportation cases." But nowhere did the Board find or suggest that this ILD Council or Committee[10] ever had anything to do with or "was the same as" the American Committee. This explains why the government's present assertion that the Board made such an identification (Resp. Br. 5, ftn.) is not annotated to the Board's Report.

The government also suppresses the fact that testimony of the Attorney General 's witness Hartle showed that in 1933 there simultaneously existed both an ILD committee defending the foreign born and the American Committee (Tr. 1730-32), a fact which negatives the claim that the two groups were the same and which helps explain why the Board did not find any such identity.[11]

b. The Reservoir Conclusion

In support of the Board's concluding finding that a secondary purpose of the American Committee was " to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party" (R. 65; see *supra*, pp. 4-5), the government alleges that the Board's "inference is supported by substantial direct evidence" (Resp. Br.

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[10] The government's brief misleadingly calls the ILD group a "Committee" without mentioning that the record is uncertain, as found by the Board (R. 37) in the light of the government's evidence on the subject (Tr. 262), whether the ILD group called itself "Committee" or "Council." There is no suggestion in the record that the American Committee ever called itself "Council."

[11] In any event, the 1932 ancestry of an organization is not a reliable index of its nature in 1960.

93). The government cites (*ibid.*) three items of this evidence.

The first is the fabrication, which we have just discussed, that the American Committee grew out of the ILD.

The second item is that, "Two witnesses testified that petitioner's Northwest committee was formed in part to attract the foreign born to support Party position." We cannot take this "evidence" seriously, since it consists exclusively of hearsay testimony by Harper and Hartle of what Henry Huff had said seven years before (see Pet. Br. 69-70). Nor is there any evidence or finding that the Northwest Committee ever did attract anybody to Party positions, or that the American Committee was aware of Huff's conversation.

The government's third and last bit of evidence is that John Lautner, the professional witness whose cross-examination the Board curtailed (Pet. Br. 98-102), "testified that petitioner's leaders carried out Party policies within petitioner, which would include attracting the foreign born to the Party." The reference this time is to the conclusory, unsupported opinion testimony of a witness who knew nothing about the policies carried out by the American Committee (see Pet. Br. 64-67). Moreover, it is a non-sequitur to suppose that the carrying out of unidentified Party policies within an organization necessarily includes whatever particular policy—in this case "attracting the foreign born to the Party"—the government would like to attribute to the organization.

c. Hearsay and Opinion Evidence

The government justifies the Board's inordinate reliance on hearsay and double hearsay[12] on the ground that "this evidence was consistent with other non-hearsay evidence" (Resp. Br. 88). We believe that reliance on hearsay is not permissible in a proceeding which, like this one, involves fundamental constitutional liberties. See *Bridges* v. *Wixon*, 326 U.S. 135, 153-54. And even in other administrative proceedings, the test is not whether there is "consistent" competent evidence, but whether the particular hearsay is corroborated. *Consolidated Edison Co.* v. *N.L.R.B.*, 305 U.S. 197, 230.

When we examine the evidence which the Board cites in support of the hearsay (Resp. Br. 82-83), we find that it does not come close to being corroborative or even "consistent." That evidence consists of the following: (1) Another repetition of the misrepresentation that the American Committee grew out of the ILD; (2) the irrelevant fact that the American Committee defends Communist aliens and opposes the Communist deportation statutes; (3) the incompetent opinion testimony of the Attorney General's informer witnesses about the "purposes" of the American Committee or Area Committees (see Pet. Br. 67-68), and (4) the incompetent opinion testimony of Lautner (whom the government describes as "witnesses") that officers of the American Committee carried out Party policies (see Pet. Br. 64-67).

One of our objections to the testimony of these witnesses on the purposes of the American Committee and

[12] The Board relied on hearsay to support its conclusions on both the aid component and the control component (Pet. Br. 68, 69-71, 89).

Area Committees was that because of their lack of acquaintance with the organizations they were plainly not qualified to give such opinions (Pet. Br. 66-68). It is no answer, as the government seems to think, that the witnesses may have known something about the Communist Party (Resp. Br. 85-86).

Respectfully submitted,

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